

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Before:

The Hon'ble Justice Arijit Banerjee

The Honible Justice M. V. Muralidaran

MAT 1969 of 2023

±

IA No: CAN/1/2023

±

CAN/2/2023

Sahajadpur S.K.U.S. Limited &Ors.

Vs.

Nimai Sabal &Ors.

Mr. Milan Chandra Bhattacharya, Sr. Adv.,

Mrs. Sulagna Bhattacharya (Bagchi)

..... For the Appellants.

Mr. Debashis Banerjee,

Mr. Rakesh Jana

..... For Respondent No. 1

Mr. PriyankarSaha,
Mr. Rudrajit Sarkar

..... For the State.

Hearing On : 19.03.2024

Judgment On: 10.04.2024

M.V. Muralidaran, J.

Calling into question the correctness of the order dated 3.8.2022 passed in W.P.A.No.4198 of 2022 by the learned Single Judge, the present appeal is filed by respondents 9 to 12 in the writ petition.

2. The first respondent has filed the writ petition challenging the disciplinary proceedings which has culminated in the imposition of a major penalty of dismissal from service.

3. By the order dated 3.8.2022, the learned Single Judge, disposed of the writ petition. It is propitious to reproduce the operative portion of the order of the learned Single Judge, which reads thus:

*"Under such circumstances, the enquiry report and the order of dismissal from service are set aside and quashed.
The proceedings will continue de novo.*

The petitioner will continue to be under suspension and the subsistence allowance payable in terms of the rules shall be credited to the bank account of the petitioner. The petitioner shall be at liberty to withdraw the amount.

The charge-sheet is not being set aside. The list of witnesses and the list of documents relied upon by the disciplinary authority shall be supplied to the petitioner. The relevant documents shall be supplied.

The enquiry proceeding shall continue de novo upon the petitioner filing his written statement. A new enquiry officer will be appointed. Such written statement shall be filed within four weeks from the date of receipt of the documents and the list of witnesses. The petitioner shall be entitled to cross-examine the PW witnesses, examine himself and his own witnesses. The disciplinary proceeding shall be concluded upon observation of the principles of natural justice.

This order shall not be construed as an expression of the court on the merits of the allegations against the petitioner.

The writ petition is disposed of.

There shall be no order as to costs."

4. Assailing the impugned order of the learned Single Judge, Mr. Milan Chandra Bhattacharya, learned Senior Advocate for the appellants, submitted that no writ lies against the appellant Cooperative Society and the terms and conditions of service are regulated by legislative Rules, being Rule 106, along with Appendix II of Chapter V of the West Bengal Cooperative Societies Rules, 2011. There is no violation of statutory rules in conducting the enquiry proceedings. The writ petition is barred on the ground of availability of an alternative remedy. Without providing any opportunity to the Society to file an affidavit in opposition, the writ petition was disposed of by the learned Single Judge. The first respondent/original writ petitioner has not suffered any prejudice by not having the copy of the enquiry report, inasmuch as he did not raise any such question of prejudice in his reply dated 7.11.2022.

5. Expatiating the ground of challenge, learned Senior Advocate submitted that in the affidavit in reply filed in the delay condonation application, an admission was made to the effect of non-maintainability of the writ petition against a Cooperative Society. Reliance is placed on the judgment of the Apex Court in the case of *Supriyo Basu and others v. W.B. Housing Board and others*, (2005) 6 SCC 289. By placing reliance upon the decision in the case of *Bholanath Roy v. State of West*

Bengal, (1996) 1 CLF 502, learned Senior Advocate submitted that a writ petition is maintainable against a Society only if it is demonstrated that any mandatory provision of the Act or the Rules framed thereunder have been violated by it.

6. Learned Senior Advocate for the appellants further submitted that, in the instant case, the first respondent cannot seek any relief beyond the provisions of the Act and the Rules which are legislative in character and the Court also cannot make any endeavor to act *de hors* the provisions of the Act and the Rules. Reliance is placed on the judgment of the Apex Court in the case of *Union of India and others v. Concord Fortune Minerals India Private Limited, (2018) 12 SCC 279*.

7. According to learned Senior Advocate for the appellants, in the bye-law Nos.12 and 13, it has been stated that the share of the Society will be Rs.1.00 crore and share of the State will be Rs.25,000/- and in terms of the bye-laws 60% share of the State has to be repaid by the Society. As such, the State is not a majority shareholder.

8. Placing reliance upon the decision of the Apex Court in the case of *St. Mary's Education Society and another v. Rajendra Prasad Bhargava and others. (2023) 4 SCC 498*, learned Senior Advocate submitted that

contract of personal service cannot be enforced. In the case on hand, it is a personal service contract and there is no public element involved and, moreover, the first respondent has not suffered any prejudice. Reliance is placed on the decision of the Apex Court in the case of *State Bank of Patiala and others v. S.K. Sharma*, (1996) 3 SCC 364.

9. Learned Senior Advocate for the appellants urged that opportunity of hearing was given to the first respondent, but he did not participate in the enquiry. The enquiry was held in accordance with law and after considering the report of the Enquiry Officer, the Board has passed the order of dismissal. Therefore, there is no illegality committed by the appellant Society in this case. In fact, the first respondent has a right of appeal under clause 15 of the Appendix to Chapter V of the 2011 Rules, but he has not availed of the same.

10. Referring to the judgment of the Apex Court in the case of *Syed Rahimuddin v. Director General CSIR and others*, (2001) 9 SCC 575, the learned Senior Advocate submitted that the findings of the Enquiry Officer cannot be held to be the findings based on no evidence. Further, the allegation of mala fide cannot be based on surmises and conjectures. It

should be based on factual matrix. No prejudice whatsoever was caused to the first respondent.

11. The learned Senior Advocate then submitted that the first respondent is the Manager in-charge. He is the custodian of records and all payments and loan account or monetary transactions were made by him. He knows everything. Assuming for the moment that there was non-supply of documents, the same did not cause any prejudice to him.

12. The learned Senior Advocate for the appellants next submitted that the Enquiry Officer repeatedly asked the first respondent to participate in the enquiry and to inspect the documents, but he did not avail such opportunity. As such, the first respondent himself abandoned the enquiry to his own prejudice. Moreover, in the reply to the show cause notice, the first respondent did not say that he is not aware of the contents of the document relied upon in the show cause notice. He replied to the show cause notice on each and every item of allegations. The charge-sheet is the verbatim reproduction of the show cause notice and, as such, the same need not be replied any further and the reply given by the first respondent to the show cause notice through his lawyer is considered sufficient. As the first respondent is the author of the

documents and he being on custodian of the documents, he did not suffer any prejudice.

13. According to the learned Senior Advocate for the appellants, the service rules are incorporated in Rule 106 and Appendix to Chapter V of 2011 Rules. No violation of any statutory provision has been committed by the disciplinary authority and, moreover, the service of copy of the enquiry report is a mere ritual. It is not absolute *sine qua non*. The first respondent/delinquent did not suffer any prejudice on account of non-supply of the enquiry report, inasmuch as he is aware of the enquiry report as he did not raise his finger about the non-supply of enquiry report in his representation to the second show cause notice.

14. Finally, the learned Senior Advocate argued that the writ petition filed by the first respondent is not maintainable under Article 226 of the Constitution of India and the learned Single Judge erred in entertaining the writ petition. Thus, a prayer is made to set aside the impugned order of the learned Single Judge.

15. Per contra, Mr. Debashis Banerjee, learned counsel appearing for the first respondent, submitted that the Enquiry Officer proceeded with

the purported enquiry without providing the first respondent with any document and list of witnesses on the basis of which the enquiry proceeded. The disciplinary authority did not furnish the enquiry report to the first respondent. The appellant Society arbitrarily and illegally dismissed the first respondent from service. There had been gross violation of the elementary principles of natural justice.

16. The learned counsel further submitted that without the documents being furnished to the first respondent and without the enquiry report, the first respondent is unable to prefer an appeal before the appellate authority as provided under Clause 15 of the Appendix to Chapter V of the West Bengal Cooperative Societies Rules, 2011, as such appeal is mandated to contain all material statements and arguments relied on and be complete in itself. In any event, despite there being provision for appeal, the first respondent has justifiably approached this Court as there has been gross violation of the principles of natural justice on the part of the Enquiry Officer as well as on the part of the Disciplinary Authority.

17. Placing reliance upon the decisions of the Apex Court in the cases of (i) *Whirlpool Corporation v. Registrar of Trade Marks*, (1998) 8

SCC 1 and (ii) Assistant Commissioner of Sales Tax v. Commercial Steel Limited, 2021 SCC OnLine SC 884, the learned counsel for the first respondent submitted that the writ petition is very well maintainable.

18. According to the learned counsel, the availability of the provision for appeal in the West Bengal Cooperative Societies Rules, 2011 would not operate as a bar in maintaining the writ petition. Firstly, there has been gross violation of the principles of natural justice. Secondly, there has been violation of the fundamental rights guaranteed under Article 21 of the Constitution of India which includes right to livelihood. Thirdly, without the documents and the enquiry report, the first respondent could not file an appeal as has been mandated.

19. The learned counsel for the first respondent strenuously contented that the writ petition against the Cooperative Society is very well maintainable and, in support of his submission, the learned counsel relied upon the following decisions:

- (i) *A.Umarani v. Registrar, Cooperative Societies and others, (2004) 7 SCC 112.*
- (ii) *Arjed Ali Gazi v. State of West Bengal, 1990 SCC OnLine Cal 220.*

- (iii) *BhabaniAdhikari v. West Bengal State Cooperative Bank, 2008 SCC OnLine Cal 787.*

20. Placing reliance upon the following decisions, the learned counsel for the first respondent emphasized the requirement of mandatory abidance of the principles of natural justice, especially, in a disciplinary proceeding resulting in prejudice to the employee concerned and argued that in the event there is no statutory provision, such principles have to be read into the statute:

- (i) *Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664.*
- (ii) *D.K.Yadav v. J.M.A. Industries Limited, (1993) 3 SCC 259.*
- (iii) *Punjab National Bank v. KunjBehariMista, (1998) 7 SCC 84.*
- (iv) *Sahara India (Firm), Luknow v. Commissioner of Income Tax, Central-I, (2008) 14 SCC 151.*
- (v) *Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati, (2015) 8 SCC 519.*

- (vi) *Chamoli District Cooperative Bank Limited v. Raghunath Singh Rana and others, (2016) 12 SCC 204.*

21. The learned counsel for the first respondent would submit that the appellant Society admittedly issued a show cause notice, charge-sheet and appointed the Enquiry Officer and Presenting Officer. The appellant Society and its Disciplinary Authority and the Enquiry Officer though initially adhered to the principles of natural justice, they have deliberately refrained from supplying the copies of the documents relied upon in the enquiry as well as the enquiry report, which is in gross violation of the principles of natural justice. In fact, they passed an *ex parte* punishment order. The documents which were supplied by the appellants pursuant to the order of this Court are incomplete.

22. According to the learned counsel for the first respondent, it is a classic case where the *doctrine of approbate and reprobate* squarely applies. The appellants after asserting or acknowledging one stand or position, cannot later choose the contrary to gain benefit from both. The learned Single Judge has rightly passed the impugned order, which

requires no interference. Thus, a prayer has been made to dismiss the appeal.

23. We have considered the rival submissions and also perused the materials available on record.

24. Sahajadpur S.K.U.S. Limited is a Primary Agricultural Society in the village of Purba Medinipur. It comprises farmers and cultivators. They used to obtain agricultural loan and repay the same. Only a kind of interest is required by the Society for the purpose of maintenance and administration of the Society. The first respondent, who was functioning as Manager in-charge in Sahajadpur S.K.U.S. Limited, was served with a show cause notice dated 17.1.2020 by the Management against alleged administrative and financial irregularities committed by him. On 22.1.2020, the first respondent replied to the show cause notice. Thereafter, a charge sheet was issued to him on 14.3.2020. Following charges were framed against the first respondent:

"1. That you being an officer of the society have misused the power and use your office for personal gain and snatched the power of the Board and also acted without the permission of the Board.

2. That unauthorized withdrawal of money from the society's fund as noted below:

a) On 17.1-.2017 Rs.6,00,000/-

b) On 23.10.2017 Rs.5,00,000/-

and after giving pressure, repayment of same on 4 dates amounting to Rs.11,00,0000/- is case of defalcation, misappropriation in connection with employer's property.

3) That in spite of repeated tagids you did not pay the interest of above said misappropriation fund, till date which comes under the purview of willful avoidance and damage to the Employer's property.

4) That due to your illegal withdrawal of money amounting to Rs.15,00,000/- from one cashew loanee's a/c (as stated in item no.4 of show cause notice), Society has to face financial loss amounting to Rs.75,93,673/- (approx) which is willful damage of property of the Society and misappropriation also.

5) That you unauthorisedly misappropriate and took away an amount of Rs.20,00,000/- from the society and after detection it has been converted as MT loan against your name on 08.04.2018, which is till date outstanding. This is a case of theft and fraud as well as dishonesty on the part of an employee of the Society.

6) That due to your negligence, while transferring the fund by RTGS (see item no 6 of show cause notice) an amount of Rs.2,50,000/- is still recoverable causing willful damage of Employer's property, and you are liable to pay the same.

7) That you took Service Security loan of Rs.4,35,000/- on 19.02.2018 showing false accumulation of PF deposit, which is a gross negligence on your part as well as subversive of discipline.

8) That you have used your office and capacity for your personal gain and benefit and drained out the fund of the Society in a preplanned manner which to good behavior and mislead co-employees, which is detrimental to the interest of the Society.

9) That you have issued GAS loan of Rs.7,62,861/- on different dates to a good nos. of loanee's without proper assignment of LICI policies. Hence, these loans are in stake which is willful avoidance of work and damage of Employer's property also.

10) That your willful damage of Employer's property, habitual absence without sanctioned leave and overstaying without sufficient reason caused loss of goodwill of the Society and members of the Society are on the horns of a dilemma to keep their fund with this Society."

25. It appears that, on 14.3.2020, Shri Santosh Kumar Maity, a retired Cooperative Development Officer was appointed as Enquiry Officer and Shri Narayan Nayek, Assistant Manager, Balageria Central Cooperative Bank Limited, Contai was appointed as Presenting Officer in the disciplinary proceedings. The first respondent was also suspended. The Enquiry Officer has issued notice to the first respondent calling upon him to appear on 26.6.2020 in the office of the appellant Society. However, the first respondent did not appear on 26.6.2020. The next hearing date was fixed on 14.7.2020 and before that the first respondent wrote a letter to the Enquiry Officer on 26.6.2020 that he had moved a writ petition, being WPA No. 5596(W) of 2020, before this Court and requested the Enquiry Officer to stop the enquiry proceedings. On 2.11.2020, the Enquiry Officer informed the first respondent that all the documents are ready for conducting the enquiry and he was requested to participate in the enquiry on 18.11.2020. However, the first respondent absented himself from attending the enquiry. The Enquiry Officer proceeded with the enquiry. After completing the enquiry, the Enquiry Officer submitted his report dated 4.12.2020 holding the first respondent guilty of every charge. On 21.12.2021, the Secretary of the Society wrote a letter to the first respondent thereby asking him to express his views on

the proposed punishment of dismissal from service within one month. The first respondent replied to the said letter stating that he was not provided with all the documents and prayed for the copies of the documents. Thereafter, by an order dated 19.1.2022, the Board dismissed the first respondent from service. By the order dated 31.8.2023, WPA No. 5596(W) of 2020 was dismissed as infructuous.

26. By the impugned order, the learned Single Judge disposed of the writ petition and set aside the enquiry report and the order of dismissal from service. The learned Single Judge directed that the proceedings should continue de novo and the first respondent continues to be under suspension and the subsistence allowance payable to him in terms of the Rules will be credited to the bank account of the first respondent and the first respondent has been given liberty to withdraw the amount. The learned Single Judge further directed that as the charge-sheet is set aside, the list of witnesses and the list of documents relied upon by the Disciplinary Authority shall be supplied to the first respondent and the enquiry proceedings will continue de novo upon filing of the written statement by the first respondent and a new Enquiry Officer will be appointed. The first respondent was given four weeks time to file his written statement and he has been granted liberty to cross-

examine the witnesses and examine himself and other witnesses on his side.

27. The appellants assail the impugned order of the learned Single Judge on the following grounds:

- There is speedy and efficacious alternative remedy available under Clause 15 of the Appendix to Rule 106 of the West Bengal Cooperative Societies Rules, 2011 against the order passed in the disciplinary proceedings and, as such, the writ petition is not maintainable.
- Challenge cannot be thrown under Article 226 of the Constitution of India against a Primary Cooperative Society which is run by farmers and peasants of the locality.
- There has been no violation of the principles of natural justice in the enquiry proceedings and, as such, the impugned order passed by the learned Single Judge directing the appellant Society to hold the enquiry de novo cannot be sustained in law.

- The first respondent/writ petitioner was given all opportunities, including filing of written statement and list of witnesses, but he did not file the written statement, nor did he appear before the Enquiry Officer. On the contrary, the first respondent allowed the Enquiry Officer to proceed *ex parte*.
- There is no bar to hold the disciplinary proceedings *ex parte* in view of the non-cooperation of the first respondent.
- The learned Single Judge went wrong in summarizing the fact and relying on the decision in the case of *Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727*, inasmuch as the first respondent does not hold any civil post.
- There is no specific Code or Rule pertaining to disciplinary proceedings in the Cooperative Society and it is only governed by Rule 106 read with Appendix to Chapter V of the West Bengal Cooperative Societies Rules, 2011.

28. According to the learned counsel for the first respondent, the Enquiry Officer proceeded with the enquiry without providing the first respondent documents and list of witnesses and that the Disciplinary Authority has also failed to furnish the enquiry report to the first respondent. Based on the enquiry report, the appellant Society arbitrarily dismissed the first respondent from service. Further, there has been gross violation of principles of natural justice and upon relying on the judgment of the Apex Court in *B. Karunakar, supra*, the learned Single Judge has rightly set aside the enquiry proceedings initiated against the first respondent. Such a well considered order of the learned Single Judge cannot be interfered with.

29. The further submission of the learned counsel for the first respondent is that without the documents being furnished to the first respondent and without the copy of enquiry report, the first respondent is unable to prefer an appeal before the appellate authority. The appellate authority would not entertain the appeal without document.

30. As could be seen from the records, on 8.6.2020, the Enquiry Officer issued notice to the first respondent calling upon him to appear in the enquiry proceedings to be held on 26.6.2020 at 11.00 a.m. However,

the first respondent did not appear on the said date. Accordingly, the Enquiry Officer fixed the hearing date on 14.7.2020 and due intimation was sent to the first respondent for the hearing on 14.7.2020. In the meanwhile, the first respondent had sent a letter to the Enquiry Officer asking him to be slow in the enquiry as he had filed W.P.No.5596(W) of 2020. Despite the Enquiry Officer in his communication dated 2.11.2020 informing the first respondent that all the documents are ready for conducting the enquiry and calling upon the first respondent to go and collect the documents and participate in the enquiry on 18.11.2020, he absented himself from attending the enquiry proceedings. The aforesaid act of the first respondent clearly proves that despite sufficient opportunity being given to the first respondent, he has not shown any interest in participating in the disciplinary proceedings and allowed the Enquiry Officer to proceed *ex parte*.

31. Challenge to the charge sheet dated 14.3.2020 was made in W.P.No.5596(W) of 2020 and when the said writ petition was taken for hearing, the learned Single Judge of this Court passed the following order:

"The subject matter of challenge in this writ petition is the charge sheet dated March 14, 2020 served by the respondent No.7 against the petitioner. According to the

petitioner, the impugned charge sheet is patently illegal. It is however submitted by the learned counsel appearing for the respondents that based on the impugned charge a disciplinary proceeding against the petitioner is about to commence tomorrow. From the documents disclosed in the writ petition, it appears that the issuance of impugned charge sheet was preceded by a show cause notice which was duly replied by the writ petitioner. However, in such reply the petitioner does not appear to have urged the ground that the impugned charge sheet is patently illegal or without consideration.

Considering the above facts, I am not inclined to pass an ad interim order directing stay of operation of the impugned charge sheet dated March 14, 2020.

Let the respondents file their affidavit-in-opposition within two weeks from date; reply thereto, if any, be filed one week thereafter.

The writ application will appear for hearing before the appropriate Bench three weeks hence."

Subsequently, by the order dated 31.8.2023, the said writ petition was dismissed as infructuous.

32. The issuance of charge sheet was preceded by a show cause notice, which was duly replied by the first respondent. However, after appointing the Enquiry Officer and when the Enquiry Officer called upon the first respondent to participate in the enquiry, he has failed to appear and/or participate in the enquiry proceedings, which clearly prove that the first respondent had wantonly avoided participating in the enquiry proceedings. So, the blame is on the part of the first respondent.

33. On a perusal of the report of the Enquiry Officer, it is clear that the Enquiry Officer has submitted his finding on each charge holding the first respondent guilty of the charges. On 21.12.2021, when the Secretary of the Society called upon the first respondent to express his views on the proposed punishment of dismissal from service, he replied by stating that he was not provided with all the documents. The non-furnishing of all the documents to the first respondent is only because the first respondent had failed to appear on notice before the authority concerned. Had the first respondent appeared before the Enquiry Officer during the enquiry proceedings, he would have been furnished all the documents relied on by the appellant Society. Since the first respondent failed to appear before the Enquiry Officer, despite knowing the hearing date, the Enquiry Officer or the other authority of the appellant Society

could not furnish the documents to the first respondent. Therefore, the non-furnishing of the documents canvassed by the first respondent cannot be countenanced. Further, as stated supra, the fault is on the part of the first respondent in not appearing and/or participating in the departmental proceedings.

34. Admittedly, the first respondent was the Manager in-charge at the relevant point of time and he was the custodian of the records. Assuming that there was non-supply of documents, the same did not cause any prejudice to him.

35. It appears that the Enquiry Officer repeatedly asked the first respondent to participate in the enquiry and to inspect the documents and the first respondent did not avail the same and he did not participate in the enquiry. As rightly argued by the learned Senior Advocate for the appellants, the first respondent himself abandoned the enquiry to his own prejudice. On a perusal of the reply given to the show cause notice, the first respondent did not say that he is not aware of the contents of the document relied upon in the show cause notice. That apart, since the first respondent is the author of the documents and he being the custodian of the documents, he did not suffer any prejudice.

36. Relying upon the decisions of the Apex Court in the cases of (i) *Swadeshi Cotton Mills*; (ii) *D.K.Yadav*; (iii) *KunjBehariMista*; (iv) *Sahara India (Firm)*; (v) *Dharampal Satyapal Limited*; (vi) *Raghunath Singh Rana*, supra, the learned counsel for the first respondent contended as under:

- Unless the statute expressly and specifically or by inevitable implication excludes the application of the rules of natural justice, the rule cannot be sacrificed at the altar of the administrative convenience or celerity.
- The aim of the rule of natural justice is to secure justice and to prevent miscarriage of justice. The rules operate in the area not covered by law validly made or expressly excluded. The principles of natural justice must be read into a statute when the statute is silent on the same.
- The requirement of giving reasonable opportunity of being heard before an order is made having adverse civil consequences, the principle is generally read into the provisions of a statute.

- There may be instances where though an authority is vested with the powers to pass orders which affect the liberty or property of an individual but the statute may not contain a provision of prior hearing, what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision and that the principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.
- The compliance of natural justice in domestic/disciplinary enquiry is necessary. Even if there are no specific statutory rules requiring observance of natural justice, the compliance of natural justice is necessary. Further, non-supply of documents which are relied upon by the Enquiry Officer to arrive at his conclusion, which would cause prejudice, is violative of the principles of natural justice.

37. In *Swadeshi Cotton Mills*, supra, the Apex Court held thus:

"17. There were other contentions also which were canvassed by the learned counsel for the parties at considerable length.

But for reasons mentioned in the final part of this judgment, we do not think it necessary, for the disposal of these appeals, to deal with the same.

.....

19. Shri Nariman contends that there is nothing in the language, scheme or object of the provisions in Section 18-AA and/or Section 18-F which expressly or by inevitable implication, excludes the application of the principles of natural justice or the giving of a pre-decisional hearing, adapted to the situation, to the owner of the undertaking. It is submitted that mere use of the word "immediate" in sub-clause (a) of Section 18-AA(1) does not show a legislative intent to exclude the application of audialterampartem rule, altogether. It is maintained that according to the decision of this Court in Keshav Mills Company Ltd. v. Union of India [(1973) 1 SCC 380 : (1973) 3 SCR 22] even after a full investigation has been made under Section 15 of the IDR Act, the Government has to observe the rules of natural justice and fair play, which in the facts of a particular case, may include the giving of an opportunity to the affected owner to explain the adverse findings against him in the investigation report. In support of his contention, that the use of the word "immediate" in Section 18-AA(1)(a) does not exclude natural justice, learned counsel has advanced these reasons:

(i) The word "immediate" in clause (a) has been used in contradistinction to "investigation". It only means that under Section 18-AA action can be taken without prior investigation under Section 15, if there is evidence in the possession of the Government, that the assets of the Company owning the

undertaking are being frittered away by doing any of the three things mentioned in clause (a); or, the undertaking has remained closed for a period of not less than three months and the condition of plant and machinery is such that it is possible to restart the undertaking. This construction, that the use of the word "immediate" in Section 18-AA(1)(a) only dispenses with investigation under Section 15 and not with the principle of audialterampartem altogether, is indicated by the marginal heading of Section 18-AA and para 3 of the Statement of Objects and Reasons of the Amendment Bill which inserted Section 18-AA, in 1971.

(ii) The word "immediate" occurs only in clause (a) and not in clause (b) of Section 18-AA(1). It would be odd if intention to exclude the principle of natural justice is spelt out in one clause of the sub-section, when its other clause does not exclude it.

(iii) Section 18-F does not exclude a pre-decisional hearing. This section was there, when in Keshav Mills case [From the Judgment and Order dated May 1, 1979 of the Delhi High Court in Civil Writ No. 408 of 1978] it was held by this Court, that even at the post-investigation stage, before passing an order under Section 18-A, the Government must proceed fairly in accordance with the rules of natural justice. The so-called post-decisional hearing contemplated by Section 18-F cannot be — and is not intended to be — a substitute for a pre-decisional hearing. Section 18-F, in terms, deals with the power of Central Government to cancel an order of take-over under two conditions, namely: First when "the purpose of an order under Section 18-A has been fulfilled, or, second,

when "for any other reason it is not necessary that the order should remain in force". "Any other reason" has reference to post-"take-over" circumstances only, and does not cover a reason relatable to pre-"take-over" circumstances. An order of cancellation under Section 18-F is intended to be prospective. This is clear from the plain meaning of the expressions "remain in force", "necessary" etc. used in the section.

Section 18-F incorporates only a facet, albeit qualified, of Section 21 of the General Clauses Act (Kamla Prasad Khetan v. Union of India [AIR 1957 SC 676 : 1957 SCR 1052 : (1958) 2 LLJ 461] , referred to). Therefore, the illusory right given by Section 18-F to the aggrieved owner of the undertaking, to make an application for cancellation of the order, is not a full right of appeal on merits. The language of the section impliedly prohibits an enquiry into circumstances that led to the passing of the order of "take-over", and under it, the aggrieved person is not entitled to show that on merits, the order was void ab initio.

As held by a Bench (consisting of Bhagwati and Vakil, JJ.) of the Gujarat High Court, in Dosabhai Ratanshah Keravale v. State of Gujarat [(1970) 2 Guj LR 361] a power to rescind or cancel an order, analogous to that under Section 21, General Clauses Act, has to be construed as a power of prospective cancellation, and not of retroactive obliteration. It is only the existence of a full right of appeal on the merits or the existence of a provision which unequivocally confers a power to reconsider, cancel and obliterate completely the original order, just as in appeal, which may be construed to exclude natural justice or a pre-decisional hearing in an

emergent situation. (reference on this point has been made to Wade's administrative law, 4th Edn., pp. 464 to 468)

(iv) "Immediacy", does not exclude a duty to act fairly, because, even an emergent situation can coexist with the canons of natural justice. The only effect of urgency on the application of the principle of fair hearing would be that the width, form and duration of the hearing would be tailored to the situation and reduced to the reasonable minimum so that it does not delay and defeat the purpose of the contemplated action.

*(v) Where the civil consequences of the administrative action — as in the instant case — are grave and its effect is highly prejudicial to the rights and interests of the person affected and there is nothing in the language and scheme of the statute which unequivocally excludes a fair pre-decisional hearing and the post-decisional hearing provided therein is not a real remedial hearing equitable to a full right of appeal, the court should be loath to infer a legislative intent to exclude even a minimal fair hearing at the pre-decisional stage merely on ground of urgency. (reference in this connection has been made to Wade's Administrative Law, *ibid.*, p. 468 bottom)*

.....

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in A.K. Kraipak [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619]). If a statutory provision either specifically or by

inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see Union of India v. Col. J.N. Sinha [(1969) 2 All ER 1207])"

38. In *D.K.Yadav*, supra, the Apex Court held as under:

"7. The principal question is whether the impugned action is violative of principles of natural justice. In A.K. Kraipak v. Union of India [(1969) 2 SCC 262] a Constitution Bench of this Court held that the distinction between quasi-judicial and administrative order has gradually become thin. Now it is totally eclipsed and obliterated. The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in Col. J.N. Sinha v. Union of India [(1970) 2 SCC 458 : (1971) 1 SCR 791] . It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely the Act made exceptions for the application of principles of natural justice by necessary implication from specific provisions in the Act like Sections 25-F; 25-FF; 25-FFF etc. The need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily to

a service of such temporary workmen to meet such exigencies and as soon as the work or service is completed, the need to dispense with the services may arise. In that situation, on compliance with the provisions of Section 25-F resort could be had to retrench the employees in conformity therewith. Particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies.

.....

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of

Article 14 and the procedure prescribed by law must be just, fair and reasonable.

.....

14. It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In D.T.C. v. D.T.C. Mazdoor Congress [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employees was set aside.

15. In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate with the service of the

appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice.

39. In *Kunj Behari Misra*, supra, the Apex Court held as follows:

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case [AIR 1963 SC 1612 : (1964) 2 SCR 1 : (1963) 1 LLJ 295] quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority

takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the

disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] .

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

40. In *Raghunath Singh Rana*, supra, the Apex Court held as under:

"19. The compliance with natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rules requiring observance of natural justice,

the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in Sur Enamel and Stamping Works Ltd. v. Workmen [Sur Enamel and Stamping Works Ltd. v. Workmen, AIR 1963 SC 1914 : (1964) 3 SCR 616] has laid down the following: (AIR p. 1916, para 4)

"4. ... An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined—ordinarily in the presence of the employee—in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report."

21 [Ed.: Para 21 corrected vide Official Corrigendum No. F.3/Ed.B.J./70/2016 dated 16-2-2017.] The Apex Court in State of Uttarakhand v. Kharak Singh [State of Uttarakhand v. Kharak Singh, (2008) 8 SCC 236 : (2008) 2 SCC (L&S) 698] had occasion to examine various contours of natural justice which need to be specified in a departmental inquiry. The Apex Court noticed earlier judgments where principles were laid down as to how inquiry is to be conducted. It is useful to refer paras 9, 10, 11, 12, 13 and 15, which are to the following effect: (SCC pp. 240-44)

"9. Before analysing the correctness of the above submissions, it is useful to refer various principles laid

down by this Court as to how enquiry is to be conducted and which procedures are to be followed.

10. The following observations and principles laid down by this Court in *Associated Cement Companies Ltd. v. Workmen* [*Associated Cement Companies Ltd. v. Workmen*, (1964) 3 SCR 652] are relevant: (SCR pp. 659-61)

'... In the present case, the first serious infirmity from which the enquiry suffers proceeds from the fact that the three enquiry officers claimed that they themselves had witnessed the alleged misconduct of Malak Ram. Mr Kolah contends that if the Manager and the other officers saw Malak Ram committing the act of misconduct, that itself would not disqualify them from holding the domestic enquiry. We are not prepared to accept this argument. If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eyewitness of the impugned incident. As we have repeatedly emphasized, domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. If an officer claims that he had himself seen the misconduct alleged against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer. How the knowledge claimed by the enquiry officer can vitiate the entire proceedings of the enquiry is illustrated by the present enquiry itself. ...

... It is necessary to emphasize that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an

opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that MrSule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.'

11. In *ECIL v. B.Karunakar*, (1993) 4 SCC, it was held:

'(1) Where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz. before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs

to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment. The second stage consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz. the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence in respect of the charges.

Article 311(2) says that the employee shall be given a 'reasonable opportunity of being heard in respect of the charges against him'. The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by

overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. The proviso to Article 311(2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry.

Hence, when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.'

12. In RadheyShyam Gupta v. U.P. State Agro Industries Corpn. Ltd. [RadheyShyam Gupta v. U.P. State Agro Industries Corpn. Ltd., (1999) 2 SCC 21 : 1999 SCC (L&S) 439] , it was held: (SCC p. 36, para 34)

'34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to

gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee—even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.'

13. *In Syndicate Bank v. Venkatesh Gururao Kurati [Syndicate Bank v. Venkatesh Gururao Kurati, (2006) 3 SCC 150 : 2006 SCC (L&S) 487] the following conclusion is relevant: (SCC p. 159, para 18)*

'18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.'

15. *From the above decisions, the following principles would emerge:*

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

41. We have gone through the aforesaid decisions relied upon by the learned counsel for the first respondent. We are bound to follow the ratio laid down in the aforesaid decisions. There is no quarrel over the proposition of the Apex Court that the compliance of natural justice is necessary in domestic/disciplinary enquiry.

42. The learned Single Judge while disposing of the writ petition observed as under:

"The court finds procedural irregularity. The charge-sheet does not indicate the list of witnesses and the list of documents relied upon by the disciplinary authority. The disciplinary authority is unable to satisfy the court whether the documents relied upon by the disciplinary authority were ever served upon the petitioner. Admittedly, the enquiry report was not served upon the petitioner. Such failure was completely in violation of the principles of natural justice."

43. For arriving at the aforesaid observation, the learned Single Judge has referred to the decision in the case of *B. Karunakar*, supra. According to learned Senior Advocate for the appellants, the first respondent did not hold any civil post. Therefore, the learned Single Judge ought not to have taken the aid of the decisions in the case of *B. Karunakar*, supra. As rightly argued by learned Senior Advocate for the appellants, the learned Single Judge erred in summarizing the fact and relying on a decision in the case *B. Karunakar*, supra, as the first respondent does not hold any civil post.

44. As stated supra, in the instant case, several opportunities of hearing were given to the first respondent to participate in the enquiry.

However, he did not avail the same and the enquiry was held and the report was submitted by the Enquiry Officer. After considering the report of the Enquiry Officer, the Board passed the order of dismissal.

45. It is not the case of the first respondent that no notice was given before initiation of the disciplinary proceedings. The first respondent was well aware of the hearing of the enquiry, however, he did not participate. In view of the above, the argument of the learned counsel for the first respondent that there is violation of the principles of natural justice cannot be accepted. The initiation of the disciplinary proceedings against the first respondent for the misconduct alleged against him is not vitiated on the ground of the principles of natural justice. Only because of the non-cooperation of the first respondent, the Enquiry Officer proceeded with the enquiry *ex parte*. There is no bar to holding the disciplinary proceedings *ex parte* in view of the non-cooperation of the first respondent. Thus, we are of firm view that there is no violation of principles of natural justice.

46. Coming to the maintainability of the writ petition against the appellant Society, the learned Senior Advocate for the appellants submitted that no writ lies against the appellant Cooperative Society. In

support, the learned Senior Counsel placed reliance upon the decision of a Division Bench of this Court in the of *Bhabani Adhikari v. West Bengal State Cooperative Bank Limited and others*, (2009) 1 CHN 573.

47. In *Bhabani Adhikari*, supra, the Division Bench of this Court was considering the question of maintainability of the writ petition and it was held that no writ petition is maintainable against the Cooperative Society in view of various decisions.

48. On the other hand, the learned counsel for the first respondent contended that the writ petition is maintainable against a Cooperative Society. In support, the learned counsel placed reliance upon the decisions in the cases of *A. Umaraniand Arjed Ali Gazi* supra. On a thorough reading of the said decisions, we are of the view that the same are not helpful to the case of the first respondent.

49. It is trite that every public function/public duty would not make a writ petition to be maintainable against an authority or a person referred under Article 226 of the Constitution of India unless functions are such which are akin to the functions of the State or are sovereign in nature.

50. In *St. Mary's Education Society*, supra, the Apex Court held that *"... it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there can be a public element in the action complained of"*.

51. Time and again, the Apex Court held that individual wrongs or breach of mutual contracts without having any public law element as its integral part cannot be rectified through a writ petition under Article 226 of the Constitution of India. Here, is a matter of personal service contract and there is no public law element involved.

52. The appellant Society is absolutely non-governmental functioning authority. It is only a Cooperative Society formed by village farmers and peasants. It is not a State within the meaning of Article 12 of the Constitution of India. Therefore, the learned Single Judge ought not to have entertained the writ petition.

53. The learned Senior Advocate for the appellants further submitted that the writ petition challenging the order of punishment as well as the charge-sheet is barred on the ground of availability of effective alternative remedy.

54. On the other hand, it is the contention of the learned counsel for the first respondent that since there has been gross violation on the part of the Enquiry Officer as well as the Disciplinary Authority, the first respondent has filed the writ petition. He further contended that the availability of the provision for appeal in the West Bengal Cooperative Societies Rules, 2011 would not operate as a bar in maintaining the writ petition. Without the documents and the enquiry report, the first respondent could not file the appeal as has been mandated in Clause 15(2) of the Appendix to Chapter V of the Rules of 2011. On the question of law with regard to maintainability of a writ petition despite availability of alternate remedy, the learned counsel for the first respondent placed reliance upon the decisions of the Apex Court in the cases of (i) *Whirlpool Corporation* and (ii) *Assistant Commissioner of Sales Tax*, *supra*.

55. In *Whirlpool Corporation*, *supra*, the Apex Court held:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

56. In *Assistant Commissioner of Sales Tax, supra*, the Apex Court held:

"11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;*
- (ii) a violation of the principles of natural justice;*
- (iii) an excess of jurisdiction; or*
- (iv) a challenge to the vires of the statute or delegated legislation.*

57. Clause 15(2) of the Appendix to Chapter V of the West Bengal Cooperative Societies Rules, 2011 provides:

".... An employee aggrieved by an order of the disciplinary authority shall have a right to appeal against such order. An appeal shall lie (1) against any order passed by the Chief Executive Officer to the Chairman of the board, (2) against the order passed by the Chairman or Vice-Chairman of the Board, to the Board, (3) against the order of the Board, to the general body of the society, every appeal shall comply with the following conditions. It shall contain all material statements and arguments relied on and shall be complete in itself. It shall specify the relief desired. It shall be submitted through proper

channel. The appellate authority shall decide the appeal within three months from the date of submission of the application except where the general body is the authority"

58. Rule 106, Appendix to Chapter V, Clause 15 specifically provides that an appeal shall lie against the order of the Board to the General Body of the Society and mechanism has also been laid down therein. When a particular legislation contains a detailed mechanism for redressal of his grievance, the aggrieved party must exhaust the said remedy.

59. In *Satyawati Tondon*, supra, the Apex Court held:

"45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

60. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available, if an efficacious alternative remedy is available to any aggrieved person.

61. The first respondent was dismissed from service on the basis of the finding reached on commission of misconduct under Clause 14 of the Appendix and that order admittedly was appealable under Clause 15 of the said Appendix. The first respondent instead of approaching the appellate authority, had invoked the writ jurisdiction under Article 226 of the Constitution of India.

62. The learned Single Judge erred in entertaining the writ petition when speedy and efficacious alternative remedy is available to the first respondent. No reason has been given in the order under appeal by the learned Single Judge as to why the Court had entertained the writ petition in spite of the existence of alternative remedy of appeal. The Writ Court is not a Court of conscience. Therefore, we are of the considered view that the learned Single Judge ought to have relegated the matter to the departmental appeal as provided under the Rules. There is also no proof filed by the first respondent to prove the self-styled gross violation canvassed on the part of the Enquiry Officer, Disciplinary Authority and the appellant Society.

63. It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the Court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable man.

64. In *Syed Rahimuddin*, supra, the Apex Court held:

"5. The further grievance that the findings of the enquiring officer are findings on no evidence is belied by the very report of the enquiring officer. The enquiring officer has dealt with the articles of charge chronologically and the relevant materials on the basis of which the ultimate conclusion is arrived at. It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable man. Having examined the report of the enquiring officer, we are unable to accept the contention of the learned counsel for the appellant that the findings of the enquiring officer cannot be held to be findings based on no evidence."

65. It is well established principle of law that the scope of judicial review in departmental enquiry is very limited. The High Court can interfere with the departmental proceedings only if the proceedings were conducted contrary to the well established principle of law or the enquiry

report is based on no evidence or where the competence of authority has been challenged.

66. It is also trite that the scope of judicial review must be confined to decision making process, but if it is found that the decision is perverse, irrational or grossly disproportionate, that decision will come under the purview of judicial review. Here, in the instant case, the enquiry proceedings were conducted as per the procedure and law. Therefore, the interference is unwarranted.

67. It is to be pointed out that after the pronouncement of the order by the learned Single Judge, on 20.9.2022, the appellant Society appointed a new Enquiry Officer and the said Enquiry Officer has issued notice on 2.11.2022 and again on 29.5.2023 to the first respondent along with list of documents and list of witnesses. It appears that on 11.7.2023, the first respondent wrote a letter to the Enquiry Officer seeking adjournment. On 12.7.2023, the Enquiry Officer has issued a notice to the first respondent conveying the message that the matter is posted on 27.7.2023.

68. According to the learned counsel for the first respondent, in compliance of the direction of the learned Single Judge, the appellant Society appointed the Enquiry Officer and the Presenting Officer and forwarded some incomplete documents to the first respondent.

69. It appears that the appellant Society proceeded later on with regard to de novo proceedings. That does not debar the appellant Society from challenging the impugned order of the learned Single Judge dated 3.8.2022. The right of appeal exists all the time subject to limitation. There is bona fide action of the appellant Society to appoint a new Enquiry Officer and new Presenting Officer, but that does not mean that the appellant Society has to continue the said enquiry, if provisions of law save the appellant from the rigours of the order passed under Article 226 of the Constitution of India.

70. As stated supra, the first respondent does not hold any civil post. There is no bar on the part of the appellant Society to proceed according to the Appendix and to pass order of punishment under Clause 14(b) of the Appendix. The first respondent has a remedy under Clause 15 of the Appendix to Chapter V of the West Bengal Cooperative Societies Rules, 2011. The first respondent, who was a Manager of the Society and

against whom various allegations have been made including misappropriation of fund, despite knowing that there is a remedy of appeal, has misled the learned Single Judge upon stating that the writ petition is maintainable under Article 226 of the Constitution of India, as if the appellant Society was a State within the meaning of Article 226 of the Constitution of India.

71. It is reiterated that the learned Single Judge erred in law in entertaining the writ petition when speedy, efficacious and alternative remedy is available to the first respondent. Therefore, we are of view that the impugned order of the learned Single Judge is not sustainable in the eye of law and the same is liable to be set aside.

72. In the result,

- (i) MAT No.1969 of 2023 is allowed.
- (ii) The impugned order of the learned Single Judge dated 3.8.2022 passed in W.P.No.4198 of 2022 is set aside.
- (iii) The first respondent/writ petitioner is granted liberty to file an appeal against the order of dismissal from service.

- (iv) If such appeal is filed, the same be considered and the appellate authority shall pass orders on merits and in accordance with law expeditiously, preferably within a period of twelve weeks from the date of filing of the appeal.
- (v) The period spent in pursuing the writ petition and the appeal shall be excluded for the purpose of computation of limitation for filing the appeal.
- (vi) No costs.
- (vii) Consequently, IA No. CAN 1 and 2 of 2023 are closed.

73. If the first respondent/writ petitioner files an appeal against the order of dismissal from service, the appellate authority shall decide the same, in accordance with law, uninfluenced by any observation made in this judgment pertaining to the merits of the disputes between the parties.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)

Arijit Banerjee, J. :-

1. I have had the opportunity of reading the detailed judgment authored by my learned Brother. I agree with the conclusion reached by His Lordship that the appeal should be allowed. However, I would allow the appeal and dismiss the writ petition on the short ground of the writ petition not being maintainable against a private body like the appellant Cooperative Society.

2. It is not in dispute that the first appellant is a primary agricultural society. Its members are farmers and peasants. It is a Cooperative Society constituted on agreement between members thereof. It is undisputedly not a department of the State nor a creature of statute. It is merely governed by a statute, presently, the West Bengal Cooperative Societies Act, 2006.

3. The law appears to be well settled that a writ petition is generally not maintainable against a Cooperative Society since it is not 'State' or 'other Authority' within the meaning of Article 12 of the Constitution of India. There is however an exception to this proposition of law. If it is alleged that there has been violation of a statutory provision on the part of a Cooperative Society, then an application under Article 226 of the Constitution has been held to be maintainable against that Society.

4. in the present case, it is not the contention of the respondent/writ petitioner that the appellant Society is 'State' or 'other Authority' within the meaning of Article 12 of the Constitution. In fact, in the pleadings filed as also in the course of argument learned Counsel admitted that the appellant Society is not 'State' or 'other Authority' within the meaning of Article 12 of the Constitution. Indeed, it was difficult for learned Counsel for the writ petitioner to contend otherwise. The Government exercises no or no appreciable control, far less, deep and pervasive control over the affairs of the appellant Society. The Society does not run on government funds. The State is not the majority shareholder of the Society. It cannot be said that the State exercises any functional control over the affairs of the Society. The Society does not enjoy any monopoly status. Its functions do not partake the character of statutory functions or public functions. The Society cannot be said to be a public authority. It is well settled that general regulations under a statute like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a Society as subject to control of the State. Such control in terms of statutory provisions are meant only to ensure proper functioning of the Society and the State or Statutory Authorities would have nothing to do with the day to day functioning of the Society. In this connection one may refer to the decisions of the Hon'ble Supreme Court in the cases

of ***Ajay Hasia v. Khalid Mujib Sehravardi reported at (1981) 1 SCC 722; Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, reported at (2002) 5 SCC 111 and S.S. Rana v. Registrar, Coop. Societies & Anr., reported at (2006) 11 SCC 634.***

5. However, learned Advocate for the writ petitioner argued that the writ application is maintainable because the appellant Society has acted in breach of statutory provisions. In the writ petition, which I have carefully scanned, there is no indication at all as to which provision of which statute or statutory Rule has been violated by the appellant Society. At two places, there are bald allegations that the impugned action of the appellant Society is in breach of the principles of natural justice and statutory provisions. In my opinion, such a general and vague statement is not sufficient. In order to maintain a writ petition against a Cooperative Society, the petitioner has to specify the statutory provision that has been breached by the Society. The Court will then enquire as to what is the nature of the statutory duty placed on the Society and the Court will consider whether or not the same is a statutory public duty which the writ court should enforce. In other words, a public law element must be involved even in such a case. Even if a writ petition is held to be maintainable against a Cooperative Society, the Court will not enforce a private contract of employment between the Society and its employee

nor will adjudicate a private dispute between them. In this connection, one may refer to the decisions of the Hon'ble Supreme Court in the cases of ***Supriyo Basu & Ors. v. W.B. Housing & Ors. Reported at (2005) 6 SCC 289 and St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors., reported at (2023) 4 SCC 498.***

6. In this connection one may also refer to the decision of a Division Bench of this Court in the case of ***Bhabani Adhikari v. West Bengal State Cooperative Bank Ltd. & Ors., reported at 2009 (1) CHN 573.*** In that case, in the context of a Cooperative Society, the Division Bench held, inter alia, that "if the principle is that a writ petition founded on the breach of a statutory rule or provision relating to him can be entertained against a person or body which is not an instrumentality of the State within the extended meaning assigned to such instrumentality by the *Ajay Hasia* and the *Pradeep Kumar Biswas* judgment, the mandatory provision has to be traced to a statute or statutory rule and its breach has to be alleged." In the facts of that case, the Division Bench found that Rule 48 (f) of the West Bengal Cooperative Societies Rules, 1987, was attracted. That Rule empowered the Board of a Cooperative Society "to appoint, discharge or dismiss or remove employees of the Society; provided that no employee of a Cooperative Society shall be dismissed or removed from service except after an enquiry in which he

has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges, and where it is proposed, after such enquiry, to dismiss or remove him, until he has been given a reasonable opportunity of making representation on the punishment proposed; ...” The Division Bench found that there was infraction of that statutory rule and accordingly held the writ petition to be maintainable. The Court however went on to observe that “if Rule 48(f) were not in existence, then the writ petition would not have been maintainable against this private cooperative bank. It would not do to merely cite a statutory Rule without demonstrating which part of such Rule had been breached. It is the premise on which the writ Court would assume its authority. A petition under Article 226 of the Constitution has to be based on the status or deemed status of the respondent complained against or, in the matter of employment (which is the only aspect relevant to this case) as the authorities suggest, on the substance of the breach complained of. If the writ petition is not founded on the status or deemed status (all-pervasive control, nature of activity of the respondent complained against), the substance of the breach in a matter pertaining to employment has to be traced to a mandatory statutory provision. The writ petitioner here scrapes through only because he had cited the

substance of Rule 48(f) in his writ petition and had generally said therein that the cooperative bank employer had violated the statutory rules”.

7. It may be noted that there is provision in the West Bengal Cooperative Societies Act, 2006 or the West Bengal Cooperative Societies Rules, 2011, which is akin to or in parimateria with Rule 48(f) of the West Bengal Cooperative Societies Rules, 1987. In the 2011 Rules under Rule 106, which is captioned “Method of Recruitment and conditions of service of the officers and employees of Cooperative Societies”, there is a section with the heading ‘APPENDIX TO CHAPTER V’, dealing with Method of Recruitment and Conditions of Service. Clause 14 of that Appendix enumerates the various types of acts which shall constitute misconduct of an employee and the penalties that may be imposed on an employee for such misconduct, by the Disciplinary Authority. Clause 15 under that Appendix reads as follows: -

“15. Disciplinary and Appellate Authorities

(1) For the purpose of imposing any penalty under paragraph 14, the Board which is the appointing authority, shall be the „disciplinary authority“, and the general body of members in the general meeting shall be the appellate authority.

(2) An employee aggrieved by an order of the disciplinary authority shall have a right to appeal against such order. An

appeal shall lie (1) against any order passed by the Chief Executive Officer to the Chairman of the board, (2) against the order passed by the Chairman or the Vice-Chairman of the Board, to the Board, (3) against the order of the Board, to the general body of the society, every appeal shall comply with the following conditions. It shall contain all material statements and arguments relied on and shall be complete in itself. It shall specify the relief desired. It shall be submitted through proper channel. The appellate authority shall decide the appeal within three months from the date of submission of the application except where the general body is the authority.”

8. Apart from the aforesaid, in the 2006 Act or in the 2011 Rules, there is no other provision relating to disciplinary proceedings. The respondent/writ petitioner has not specified which part of the aforesaid statutory rule has been infringed by the appellant Society.

9. Learned Advocate for the respondent/writ petitioner argued, relying on several decisions of the Hon’ble Supreme Court, that if a provisions in a statute or Rules framed thereunder, pertaining to disciplinary proceedings/domestic enquiry, does not specifically provide for observance of the Rules of natural Justice, the requirement of complying with the principles of natural justice has to be necessarily read into such

a provision. Natural justice is the heart and soul of a disciplinary proceeding. Such a proceeding held in breach of the principles of natural justice would be void and non-est in the eye of law. In the present case, according to learned Counsel, the principles of natural justice have to be read into Clause 15 of the Appendix to Chapter V under Rule 106 of the 2011 Rules. Since, there has been violation of the principles of natural justice in this case, there has been infraction of Rule 106 read with Clause 15 of the Appendix thereunder. Hence, there has been violation of a statutory provision making the writ petition maintainable.

10. Attractive though it may seem at first blush, I am unable to accept such a contention. I cannot but agree with learned Counsel that any disciplinary proceeding must be conducted by observing the principles of natural justice. Indeed, the doctrine of natural justice has been held to be a part of Article 14 of the Constitution of India. Except where a statutory provision, expressly or by necessary implication, excludes the application of the principles of natural justice, those principles must be adhered to. However, in my view, it will be too much to argue that a writ petition against a private person or a private body is maintainable if the petitioner alleges infraction of a statutory provision by contending that principles of natural justice have been violated and the rules of natural justice are to be read into the concerned statutory provision. This would be stretching

the argument too far. In any event, in the writ petition, there is not even an averment that Rule 106 of the 2011 Rules or any of the clauses in the Appendix thereunder, has been violated by the appellant Society.

11. In my considered opinion therefore, the learned Single Judge ought not to have entertained the writ petition. In that view of the matter, I do not deem it necessary to deal with the other points urged by learned Advocates for the parties.

12. I would therefore allow the appeal and dismiss the writ petition. However, if the respondent/writ petitioner assails the disciplinary proceedings and the dismissal order before any other forum available to him in law, including by way of statutory appeal, such proceeding shall be decided in accordance with law without being influenced by any observation in this judgment on the merits of the disputes between the parties. The respondent/writ petitioner will be at liberty to agitate all points before such other forum including the point of breach of the principles of natural justice on the part of the appellant Society.

(Arijit Banerjee, J.)

I agree.

(M.V. Muralidaran, J.)