IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 26th OF JUNE, 2023

WRIT PETITION No. 9647 of 2013

BETWEEN:-

ASHOK SINGH S/O LATE SHRI SHANKA SINGH, AGED ABOUT 56 YEARS, NEAR KRIDA PARISSAR BESIDES SHIV GOPAL SHRAM BARATI AMARKANTAK ANOOP PUR (MADHYA PRADESH)

.....PETITIONER

(SHRI SANJAY KUMAR AGRAWAL - ADVOCATE)

AND

1. **UNION OF INDIA TH:SECRETARY MINISTRY OF HUMAN RESOURCE DEVELOPMENT SHASTRI BHAWAN, NEW DELHI (MADHYA PRADESH)**

2. **INDIRA GANDHI NATIONAL TRIBAL UNIVERSITY THROUGH ITS REGISTRAR AMARKANTAK (MADHYA PRADESH)**

3. **VICE CHANCELLOR INDIRA GANDHI NATIONAL TRIBAL UNIVVERSITY AMARKANTAK (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ARPAN J. PAWAR – ADVOCATE FOR THE RESPONDENTS NO.2 AND 3)

……

This petition coming on for admission this day, the court passed the following:

O R D E R

This petition, under Article 226 of the Constitution of India, has been filed against the order dated 26.04.2013 passed by Vice Chancellor, Indira Gandhi National Tribal University in Ref.No.IGNTU/VC/2013/495 by which the services of the petitioner have been dismissed with effect from the date of his suspension order dated 22.11.2012.

2. It is the case of the petitioner that the order of dismissal has been issued in pursuance to the departmental enquiry conducted against the petitioner. It is submitted that Vice-Chancellor was out and out to make illegal appointments *de hors* the rules. The same was opposed by the petitioner. When the petitioner was on leave, illegal appointment orders were got issued under the signature of Deputy Registrar. Therefore, with malafide intentions, chargesheet was issued including the charges that the petitioner had challenged the authority of the Vice-Chancellor also.

3. Various allegations/counter allegations were made by the petitioner as well as the respondents against each other. However, looking to the legal issue, which is also involved in the present case, this Court does not think it appropriate to consider the allegations/counter allegations, which are being made by the parties against each other.

4. Chargesheet dated 05.12.2012 was issued against the petitioner on the following 4 charges :-

> "A. Shri Ashok Singh, Registrar (presently under suspension), IGNTU has secured appointment as

Registrar, Indira Gandhi National Tribal University, Amarkantak by concealing certain material facts with regard to arrest & incarceration in Arunachal Pradesh and the consequent termination by NERIST.

B. Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak, while applying for the post of Registrar in B.H.U. Varanasi has concealed the facts and information in the application form with regard to termination by NERIST and arrest & incarceration and has given false declaration that 'No' case is pending against him and obtained the NOC/forwarding from the Vice-Chancellor of Indira Gandhi National Tribal University, Amarkantak (M.P.) thereupon.

C. Shri Ashok Singh, Registrar (presently under suspension). IGNTU, Amarkantak himself drafted/prepared the format inviting applications in January, 2012 for the post of registrar deliberately omitting the requirement of disclosure of registration of FIR/Pendency of criminal case etc so that he is not required to reveal the fact of registration of 2 FIR's, registration of criminal cases and his incarceration for few days in Jail. The aforesaid clause (seeking information) which invariably is there in the application forms for all other posts in the university was deliberately scored out by Shri Ashok Singh, Registrar to seek favourable consideration of his application. Further, to conceal the aforesaid facts, Shri Ashok Singh has taken away his personal file from the University.

D. Shri Ashok Singh, Registrar (presently under suspension), IGNTU, Amarkantak has been found negligent in discharge of the following official duties:-

(i) Shri Ashok Singh, Registrar (presently under suspension),IGNTU Amarkantak has submitted Annual budget in University Grants Commission (UGC) without approval of the Vice-Chancellor.

(ii) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has not provided complete filled up format to the Vice-Chancellor which was submitted in UGC on 10.09.2012.

(iii) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has appointed two Assistant Superintendent (Examination) without approval of the competent authority.

(iv) Shri Ashok Singh, Registrar (presently under suspension). IGNTU Amarkantak has mentioned in his letter No. IGNTU/Reg./201/2012 dated 16.11.2012 that *'it is not clear which authority will be treated as competent authority*'. However, under Section 13(2) of the Indira Gandhi National Tribal University Act 2007, it is mentioned that "*the Vice-Chancellor shall be principal executive and academic officer of the University*".

(v) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has issued a certificate to his son Shri Anurag without any dispatch number and approval of the higher authority.

(vi) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has put up the file for engaging the Security Agency and submitted his recommendation for L2 which is not as per GFR.

(vii) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has deliberately remained absent during the visit of 'Vidhan Sabha Samiti' in the University Campus and proceeded on leave.

(viii) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has deliberately remained absent during the visit of the Chairman of the Scheduled Tribe Commission and other Members of the Commission, Government of India in the IGNTU Campus.

(ix) Shri Ashok Singh, Registrar (presently under suspension). IGNTU Amarkantak has locked SIM of official mobile number without getting approval of the higher authority.

(x) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has not taken any action of the complaint of Mr. Dushyant Kumar Turkel of 3.10.2012 & 14.06.2011.
(xi) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has not submitted the detailed factual report asked by the Vice-Chancellor, IGNTU dated 02.11.2012 which related to the quarry of the National Commission for Scheduled Tribes.
(xii) Shri Ashok Singh, Registrar (presently under suspension), IGNTU Amarkantak has written a letter No. IGNTU/Reg/conf/202/2012 dated 17.11.2012 to the Vice- Chancellor using harsh language asking comments on the representation received through MHRD and sent the copy of the letter to the Secretary, MHRD and Under Secretary, MHRD though correspondence was purely internal.

By the above acts, Shri Ashok Singh, Registrar (presently under Suspension), IGNTU Amarkantak has shown gross misconduct and failed to maintain absolute integrity, honesty and acted in a manner of unbecoming officer of the University."

5. By the same memorandum, Justice K.D.Sahi, Retired Judge, Allahabad High Court, U.P. was appointed as an Enquiry Officer and Dr.Utpal Debnath, Registrar (I/c), IGNTU Amarkantak was appointed as a Presenting Officer on behalf of the University. A list of witnesses was also issued along with the chargesheet in which Dr.Utpal Debnath was cited as a witness also. Thus, it is clear that the Presenting Officer was also cited as a witness.

6. It is submitted by the counsel for the petitioner that when the departmental enquiry began, he raised an objection that Dr.Utpal Debnath cannot act as a witness as well as the Presenting Officer. Accordingly, on the very same day, the Vice-Chancellor issued a

memorandum directing Dr.Utpal Debnath to act as a Presenting Officer in the matter of the petitioner and not as a witness.

7. It is further submitted by the counsel for the petitioner that although Dr.Utpal Debnath was withdrawn as a witness but one thing is clear that since the University had cited him as a witness, therefore, Dr.Utpal Debnath had several personal informations, which were expected to be disclosed by him in the departmental enquiry as a witness. He was also having close association with Vice-Chancellor and some of the charges were of challenging the authority of Vice-Chancellor also. It is further submitted that a witness cannot act as a Presenting Officer and subsequent withdrawal/deletion of name of Dr.Utpal Debnath from the list of witnesses would not be sufficient to remove a reasonable apprehension in the mind of the petitioner with regard to the personal biases of the Presenting Officer. It is further submitted that it is clear from various sub charges of Charge No.4, the Vice-Chancellor himself was an aggrieved party and, therefore, Dr.Utpal Debnath should not have acted as a Presenting Officer.

8. Per contra, it is submitted by the counsel for the University that since Dr.Utpal Debnath was withdrawn from the list of witnesses, therefore, it is clear that there was no impediment for Dr.Utpal Debnath to act as a Presenting Officer.

9. Heard the learned counsel for the parties.

10. There cannot be a direct evidence to show the biases of an authority but it has to be inferred from the surrounding circumstances. By citing Dr.Utpal Debnath, as a witness, the University had clearly declared that Dr.Utpal Debnath will be deposing in favour of the University and he is having certain

personal informations about the case. Thus, the interest of Dr.Utpal Debnath can be inferred.

11. The Supreme Court in the case of **State of Punjab Vs. V.K.Khanna and others,** reported in **(2001) 2 SCC 330** has held as under :-

> "**2.** The concept of fairness in administrative action has been the subject-matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the court and no strait-jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness: And on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed — it is the appreciation of this common man's perception in its proper perspective which would prompt the court to determine the situation as to whether the same is otherwise reasonable or not.
>
> **5.** Whereas fairness is synonymous with reasonableness — bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice (see in this context *Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant* [(2001) 1 SCC 182 : JT 2000 Supp (2) SC 206]). In almost all legal inquiries, "intention as distinguished from motive is the all-important factor" and in common parlance a

malicious act stands equated with an intentional act without just cause or excuse. In the case of *Jones Bros. (Hunstanton) Ltd.* v. *Stevens* [(1955) 1 QB 275 : (1954) 3 All ER 677 (CA)] the Court of Appeal has stated upon reliance on the decision of *Lumley* v. *Gye* [(1853) 2 E&B 216 : 22 LJQB 463] as below:

> "For this purpose maliciously means no more than knowingly. This was distinctly laid down in *Lumley* v. *Gye* [(1853) 2 E&B 216 : 22 LJQB 463] where Crompton, J. said that it was clear law that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has quitted his master during his period of service, commits a wrongful act for which he is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse : *Bromage* v. *Prosser* [(1825) 1 C&P 673 : 4 B & C 247] . 'Intentionally' refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as for instance to rebut a plea of privilege in defamation, malice in fact has to be proved."

10. Before adverting to the rival contentions as raised in the matter, it would also be convenient to note the other perspective of the issue of bias to wit: mala fides. It is trite knowledge that bias is included within the attributes and broader purview of the word "malice".

11. The Supreme Court in the case of **Union of India and others Vs.Sanjay Jethi and another,** reported in **(2013) 16 SCC 116** has held as under :-

> **"34.** The fundamental principles of natural justice are ingrained in the decision-making process to

prevent miscarriage of justice. It is applicable to administrative enquiries and administrative proceedings as has been held in *A.K. Kraipak* v. *Union of India* [(1969) 2 SCC 262] . It is also fundamental facet of principle of natural justice that in the case of quasi-judicial proceeding the authority empowered to decide a dispute between the contesting parties has to be free from bias. When free from bias is mentioned, it means there should be absence of conscious or unconscious prejudice to either of the parties and the said principle has been laid down in *Gullapalli Nageswara Rao* v. *A.P. SRTC* [AIR 1959 SC 308], *Gullapalli Nageswararao* v. *State of A.P.* [AIR 1959 SC 1376] and *G. Sarana* v. *University of Lucknow* [*G. Sarana* v. *University of Lucknow*, (1976) 3 SCC 585 : 1976 SCC (L&S) 474] .

35. In *Manak Lal* v. *Prem Chand Singhvi* [AIR 1957 SC 425] the Court has stated thus : (AIR p. 429, para 4)

> "*4*. … It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

36. In *G. Sarana* [*G. Sarana* v. *University of Lucknow*, (1976) 3 SCC 585 : 1976 SCC (L&S) 474] the learned Judges referred to the *Principles of*

Administrative Law by J.A.G. Griffith and H. Street (4th Edn.), and observed that the position with regard to bias has been aptly and succinctly stated thus : (SCC pp. 590-91, para 12)

> "*12*. … 'The prohibition or bias strikes against factors which may improperly influence a Judge in deciding in favour of one party. The first of the three disabling types of bias is bias on the subject-matter. Only rarely will this bias invalidate proceedings. "A mere general interest in the general object to be pursued would not disqualify," said Field, J., holding that a Magistrate who subscribed to the Royal Society for the Prevention of Cruelty to Animals was not thereby disabled from trying a charge brought by that body of cruelty to a horse. There must be some direct connection with the litigation. If there is such prejudice on the subject-matter that the court has reached fixed and unalterable conclusions not founded on reason or understanding, so that there is not a fair hearing, that is bias of which the courts will take account, as where a justice announced his intention of convicting anyone coming before him on a charge of supplying liquor after the permitted hours …
>
> Secondly, a pecuniary interest, however, slight will disqualify, even though it is not proved that the decision is in any way affected.
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> The third type of bias is personal bias. A Judge may be a relative, friend or business associate of a party, or he may be personally hostile as a result of events happening either before or during the course of a trial. The courts have not been consistent in laying down when bias of this type will invalidate a hearing. The House of Lords in *Frome United Breweries Co. Ltd.* v. *Bath JJ* [1926 AC 586 : 1926 All ER Rep 576 (HL)] approved an earlier test of whether "there is a real likelihood of bias." The House of Lords has since approved a dictum of Lord Hewart that "justice should not only be done, but should manifestly

> and undoubtedly be seen to be done" although it did not mention another test suggested by him in the same judgment : Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.'"

Eventually in the said decision in *G. Surana* [*G. Sarana* v. *University of Lucknow*, (1976) 3 SCC 585 : 1976 SCC (L&S) 474] it has been ruled that what has to be seen in a case where there is an allegation of bias in respect of a member of an administrative board or body is whether there is a reasonable ground for believing that he was likely to have been biased. In other words, whether there is substantial possibility of bias animating the mind of the member against the aggrieved party.

37. At this juncture, we may refer with profit to *Halsbury's Laws of England*, 4th Edn., Vol. 2, para 551, where it has been observed:

> "551. *Want of impartiality or bias; fraud*.— … The test for bias is whether a reasonable intelligent man, fully appraised of all the circumstances, would feel a serious apprehension of bias [*R.* v. *Moore, ex p Brooks*, (1969) 2 OR 677 : (1969) 6 DLR (3d) 465 (Can)] ."

38. In *Transport Deptt.* v. *Munuswamy Mudaliar* [1988 Supp SCC 651] , while dealing with the concept of bias as a part of natural justice, the Court observed that : (SCC p. 654, para 12)

> "*12*. … A predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. There must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials."

Needless to say, personal bias is one of the limbs of bias, namely, pecuniary bias, personal bias and official bias.

39. In *Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant* [*Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant*, (2001) 1 SCC 182 : 2001 SCC (L&S) 189] , the Court referred to a passage from the view expressed by Mathew, J. in *S. Parthasarathi* v. *State of A.P.* [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] : (*Girja Shankar Pant case* [*Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant*, (2001) 1 SCC 182 : 2001 SCC (L&S) 189] , SCC pp. 198-99, para 28)

> "*28*. … '*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* [(1969) 1 QB 577 : (1968) 3 WLR 694 : (1968) 3 All ER 304 (CA)] (WLR at p. 707].' (SCC p. 465, para 16)"

40. Thereafter, the two-Judge Bench in *Girja Shankar Pant case* [*Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant*, (2001) 1 SCC 182 :

2001 SCC (L&S) 189] referred to the decision in *Franklin* v. *Minister of Town and Country Planning* [1948 AC 87 : (1947) 2 All ER 289 (HL)] and the sounding of a different note and the dilution of the principle by English Courts in *R.* v. *Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 2)* [(2000) 1 AC 119 : (1999) 2 WLR 272 : (1999) 1 All ER 577 (HL)] and the view expressed by Lord Hutton in the said case and thereafter proceeded to analyse the doctrine propounded in *Locabail (U.K.) Ltd.* v. *Bayfield Properties Ltd.* [*Locabail (U.K.) Ltd.* v. *Bayfield Properties Ltd.*, 2000 QB 451 : (2000) 2 WLR 870 : (2000) 1 All ER 65 (CA)] where the Court of Appeal had upon detailed analysis of the decision in *R.* v. *Gough* [1993 AC 646 : (1993) 2 WLR 883 : (1993) 2 All ER 724 (HL)] together with *Dimes case* [*Dimes* v. *Grand Junction Canal Proprietors*, (1852) 3 HL Cas 759] , *Pinochet case* [(2000) 1 AC 119 : (1999) 2 WLR 272 : (1999) 1 All ER 577 (HL)] as also *Ebner, In re* [(1999) 161 ALR 557 (Aust)] and the decision of the Constitutional Court of South Africa in *President of the Republic of South Africa* v. *South African Rugby Football Union* [1999 ZACC 9 : (1999) 4 SA 147] opined 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 learned Judges took note of the fact that the Court of Appeal continued to give effect that everything will depend upon facts which may include the nature of the issue to be decided.

41. Eventually, this Court ruled thus : (*Girja Shankar Pant case* [*Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant*, (2001) 1 SCC 182 : 2001 SCC (L&S) 189] , SCC p. 201, para 35)

> "*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* [*Locabail (U.K.) Ltd.* v. *Bayfield Properties Ltd.*, 2000 QB 451 : (2000) 2 WLR 870 : (2000) 1 All ER 65 (CA)] ."

(emphasis supplied)

42. In *G.N. Nayak* v. *Goa University* [(2002) 2 SCC 712 : 2002 SCC (L&S) 350] it has been laid down that : (SCC p. 723, para 34)

"*34*. It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest—whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred."

43. In *Delhi Financial Corpn.* v. *Rajiv Anand* [(2004) 11 SCC 625] while dealing with the concept of the doctrine that "no man can be a judge in his own cause", the Court opined that the said

principle can be applied only in two cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. The Court further observed that an officer of a statutory corporation has been appointed as an authority, does not by itself bring the said doctrine into operation. The learned Judges further proceeded to state that in individual cases bias may be shown against a particular person but in the absence of any proof of personal bias or connection merely because officers of a particular corporation are named as the authority does not mean that those officers would be biased. Unless the officer concerned is personally interested, a question of bias or conflict between his interest and his duty would not arise.

44. In *Chandra Kumar Chopra* v. *Union of India* [(2012) 6 SCC 369 : (2012) 2 SCC (L&S) 152] it has been held that : (SCC p. 379, para 25)

> "*25*. … mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one's imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of a reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by the rule of law, fairness of action, propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum."

45. The plea of bias it is to be scrutinised on the basis of material brought on record whether someone makes wild, irrelevant and imaginary allegations to frustrate a trial or it is in consonance

with the thinking of a reasonable man which can meet the test of real likelihood of bias. The principle cannot be attracted in vacuum.

46. In *State of Gujarat* v. *R.A. Mehta* [(2013) 3 SCC 1 : (2013) 2 SCC (Cri) 46 : (2013) 1 SCC (L&S) 490] , a two-Judge Bench dealing with "bias" has observed thus : (SCC p. 37, para 58)

> "*58*. … Bias is one of the limbs of natural justice. The doctrine of bias emerges from the legal maxim *nemo debet esse judex in propria causa*. It applies only when the interest attributed to an individual is such so as to tempt him to make a decision in favour of, or to further his own cause. There may not be a case of actual bias, or an apprehension to the effect that the matter most certainly will not be decided or dealt with impartially but where the circumstances are such so as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision, the same is sufficient to invoke the doctrine of bias."

47. In the said *R.A. Mehta case* [(2013) 3 SCC 1 : (2013) 2 SCC (Cri) 46 : (2013) 1 SCC (L&S) 490] , it has been further observed that : (SCC p. 37, para 59)

> "*59*. In the event that actual proof of prejudice is available, the same will naturally make the case of a party much stronger, but the availability of such proof is not a necessary precondition, for what is relevant, is actually the reasonableness of the apprehension in this regard in the mind of such party. In case such apprehension exists the trial/judgment/order, etc. would stand vitiated for want of impartiality and such judgment/order becomes a nullity. The trial becomes *coram non judice*."

48. At this juncture, we think it apt to refer to the pronouncements in *Ranjit Thakur* v. *Union of India* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] and *Major G.S. Sodhi* v. *Union of India* [*Major G.S. Sodhi* v. *Union of India*, (1991) 2 SCC 382 : 1991 SCC (Cri) 357] . In *Ranjit Thakur case* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] the Court was dealing with justifiability of an order of dismissal passed by the summary court martial of which one of the Members was Respondent 4 therein. The said respondent had sentenced the appellant to suffer sentence of 28 days' rigorous imprisonment for violating the norms for representation to higher authorities and the representation that was sent to the higher authorities pertained to the ill-treatment at the hands of Respondent 4. Keeping the said factual backdrop in view the Court referred to the procedural safeguards provided under Section 130 of the Act and opined that the proceedings of summary court martial was infirm in law. Thereafter, the learned Judges proceeded to deal with the second limb of arguments also. It related to bias on the part of Respondent 4 therein. In that context, the Court observed as follows : (*Ranjit Thakur case* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] , SCC p. 618, para 16)

> "*16*. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial *coram non judice*. (See *Vassiliades* v. *Vassiliades* [AIR 1945 PC 38] .)"

49. The Court in *Ranjit Thakur case* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] referred to the decisions in *Allinson* v. *General*

Council of Medical Education and Registration [(1894) 1 QB 750 (CA)] , *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon* [(1969) 1 QB 577 : (1968) 3 WLR 694 : (1968) 3 All ER 304 (CA)] , *Public Utilities Commission of the District of Columbia* v. *Pollak* [96 L Ed 1068 : 343 US 451 (1952)] and *R.* v. *Liverpool City Justices, ex p Topping* [(1983) 1 WLR 119 : (1983) 1 All ER 490 (DC)] and, eventually, concluded that the inescapable conclusion was that the participation of Respondent 4 had rendered the court martial proceedings *coram non judice*.

50. In *Major G.S. Sodhi* [*Major G.S. Sodhi* v. *Union of India*, (1991) 2 SCC 382 : 1991 SCC (Cri) 357] , the Court did not accept the alleged plea of bias or mala fide as Lt. Col. S.K. Maini, who had ordered summary of evidence against the petitioner therein, was inimical towards him because of certain prior incidents. It was also alleged that he had not acceded to certain requests made by the petitioner during the inquiry. The Court did not accept the same on the ground that the respondent Lt. Col. S.K. Maini was only concerned with the preliminary inquiry and it was for the court martial to try the case and give its verdict and mere allegation of bias and mala fide against him did not affect the court-martial proceedings. That apart, the Court observed that the allegations against the said Maini had not been really substantiated and even they are perceived from the point of view of the petitioner therein, it could not be held that it was not reasonable on his part to apprehend that the said officer would act in a biased and partisan manner. Emphasis was laid on the fact that he was only responsible for holding a preliminary enquiry.

51. The principle that can be culled out from the number of authorities fundamentally is that the question of bias would arise depending on the facts and circumstances of the case. It cannot be an imaginary one or come into existence by an

> individual's perception based on figment of imagination. While dealing with the plea of bias advanced by the delinquent officer or an accused a court or tribunal is required to adopt a rational approach keeping in view the basic concept of legitimacy of interdiction in such matters, for the challenge of bias, when sustained, makes the whole proceeding or order a nullity, the same being *coram non judice*. One has to keep oneself alive to the relevant aspects while accepting the plea of bias. It is to be kept in mind that what is relevant is actually the reasonableness of the apprehension in this regard in the mind of such a party or an impression would go that the decision is dented and affected by bias. To adjudge the attractability of plea of bias a tribunal or a court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition."

12. Once an objection was raised by the petitioner that Dr.Utpal Debnath cannot act as a Presenting Officer as well as a witness, then in all fairness University should have been changed the Presenting Officer. But by retaining Dr.Utpal Debnath as Presenting Officer it appears that there was a possibility that Dr.Utpal Debnath may not have acted in all fairness.

13. At this stage, it is submitted by Shri Arpan J.Pawar that the entire departmental enquiry is based on the documentary evidence and therefore, even if Dr.Utpal Debnath had acted as a Presenting Officer, it has not caused any prejudice to the petitioner.

14. Considered the submissions made by the counsel for the respondents.

15. The role of a Presenting Officer is to place the material before the Enquiry Officer. If the Presenting Officer is not acting independently but is acting with the preconceived notion/mind, then it is not expected that the entire material may be placed before the Enquiry Officer. Departmental Enquiry has to be free and fair. It is true that the department may not be compelled to rely on a particular document but the presentation of the case of University by a person, who may have some biases either against the petitioner or inclination in favour of the department, then the possibility that the enquiry may not take place in free and fair manner, cannot be ruled out.

16. This Court in the case of **Surya Kumar Vs. State of M.P., decided on 14th September, 2022 in Writ Petition No.6309/2006 (Gwalior Bench)** has held as under :-

> "13. The Presenting Officer participates in the departmental inquiry as a representative of the disciplinary authority. The departmental documents are also in the custody of the Presenting Officer. The Presenting Officer should also be free from any bias and should not give an apprehension in the mind of delinquent officer that the Presenting Officer may play the game of hide and seek. It is true that there are no rules which regulate the duty of the Presenting Officer, but it does not allege that the Rules of natural justice can be given go bye. It is the duty of the Presenting Officer to uphold the interest of the disciplinary authority by all fear and honourable means. Therefore, the Supreme Court in the case of **Kokkanda B. Poondacha and others v. K.D. Ganapathi and another reported in (2011) 12 SCC 600** has held that if an Advocate has a reason to believe that he will be a witness in the case, the Advocate should not accept brief or appear in the case. It is well established principle of law that no one can be a Judge of his own cause. As per charge No. 18, the Presenting officer himself was the complainant because the allegations

were that the petitioner had misbehaved with Sarnam Singh. It is the case of the petitioner that Sarnam Singh had also lodged the FIR in respect of the same incident. Sarnam Singh had also appeared as a witness while discharging his duties as a Presenting Officer. The moment when a person appears as a witness, then he is also entitled to be cross-examined by the opposite party. While arguing the matter finally before the Inquiry Officer, Presenting Officer cannot justify his own testimony. The Gujarat High Court in the case of **Gohel Himatsingh Lakhaji Vs. Patel Motilal Garbardas and others reported in (1965) 6 GLR 531** has held as under:-

> 8. The principle underlying these authorities seems to be the well settled maxim that justice should not only be done but manifestly and undoubtedly seem to be done. The lawyar acts as an officer of the Court and he is duty bound to help the administration of justice. He is duty bound to answer all questions to the Court and to make statement of facts on which the Court must implicitly rely. These duties which are inherent in this noble profession both towards the Court and towards his client can be performed independently and fearlessly with a dispassionate; approach only if the lawyer plays an independent role as the officer of Court helping the administration of justice. As Lord Westbury put it even in civil litigation the lawyer cannot be allowed to appear as counsel in his own cause on the principle that there cannot be a mixture of two legal characters. The reasoning would apply with a still greater force where in a criminal trial the lawyer who is an accused person himself wants to appear in the same cause in the trial of the same offence and which arose out of the same transaction for his other co-accused. He can never remain unconcerned or indifferant to the cause in such a case for such a trial is bound to result in embarrassment. Mr. Thakore rightly pointed to out the provision of Section 342 of the Code of Criminal Procedure. Section 342 is as under:

(1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the Court may at any stage of any inquiry or trial without previously warning the accused put such questions to him as the Court considers necessary and shall for the purpose aforesaid question him generally on the case after the witness for the prosecution have been examine and before he is called on for his defence.

Under Sub-section (2) the accused does not incur any liability to punishment by refusing to answer such questions or by giving even false answers to them. How could any lawyer in such circumstances play both the roles consistently with his duties and without the trial being embarrassed at every stage? Similarly how could the Court at every stage maintain the distinctions between the various accused so that the statement of one accused is not in any way being utilised against the other? In the particular case in question where the lawyers appearing for the co-accused are being jointly tried for putting defamatory questions along with their clients as the co-accused the embarrassment is inherent in the situation as it could be open to the clients at any stage to plead that no such instructions were given to the lawyer concerned to put such questions. The fair trial of the accused would be hampered and even the lawyer himself would be embarrassed in the faithful discharge of his duties. The principle evolved by the House of Lords that a person cannot be both party and counsel is thus really embedded in the fundamental principles of the administration of justice and for maintaining the highest traditions of the bar and the legal profession. When the Court precludes an advocate to appear in a criminal trial where he is the co-accused it does so only in the Interests of ensuring a fair trial to the accused without any

> embarrassment to the advocate or to the other accused persons or to the Court so as to leave no room for suspicion for what is more fundamental is that justice must not only be done but must also seem to be done.

14. The Presenting Officer has a duty to be discharged by him in the inquiry and in case, if he appears as a complainant and witness, then there is every possibility of bias as his primary concern would be to ensure that the guilty of the delinquent officer is proved by hook and crook. Even otherwise, if the respondents had appointed Shri Sarnam Singh Yadav, then still the Inquiry Officer should have looked into this matter and should have forbidden Shri Sarnam Singh to act as a Presenting Officer. In the case of **Emperor Vs. Dadu Rama Surde reported in AIR 1939 Bombay 150**, it has been held as under:-

> "The question whether the Court has jurisdiction to forbid an advocate to appear in a particular case involves the consideration of conflicting principles. On the one hand, an accused person is entitled to select the advocate whom he desires to appear for him, and certainly the prosecution cannot fetter that choice merely by serving a subpoena on the advocate to appear as a witness. On the other hand, the Court is bound to see that the due administration of justice is not in any way embarrassed. Generally, if an advocate is called as a witness by the other side, it can safely be left to the good sense of the advocate to deter mine whether he can continue to appear as an advocate, or whether by so doing he will embarrass the Court or the client. If a Court comes to the conclusion that a trial will be embarrassed by the appearance of an advocate, who has been called as a witness by the other side, and if, notwithstanding the Court's expression of its opinion, the advocate refuses to withdraw, in my opinion in such a case the Court has inherent jurisdiction to require the advocate to withdraw. An advocate cannot cross-examine himself, nor can he usefully address the

> Court as to the credibility of his own 'testimony, and a Court may well feel that justice will not be done if the advocate continues to appear. But, in my opinion, the prosecution in such a case must establish to the satisfaction of the Court that the trial will be materially embarrassed, if the advocate continues to appear for the defence."

15. Since Sarnam Singh Yadav was not only the Presenting Officer, but he was also complainant and witness, therefore, the possibility of bias cannot be ruled out. Principle of nemo judex in propria causa sua would certainly apply because one of the fundamental principle of jurisprudence is that no one can be a Judge in his own cause.

16. The question is not that whether the authority was actually biased or decided partially, but when the circumstances are such as to create a reasonable apprehension in the mind of others that there is likelihood of bias affecting the decision, then the proceedings cannot be upheld.

17. The Supreme Court in the case of **Ashok Kumar Yadav and others v. State of Haryana and others reported in (1985) 4 SCC 417** has held as under:-

> "16. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real livelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice

must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a Welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forest Service in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150 : (1970) 1 SCR 457] . What happened in this case was that one Naqishbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naqishbund who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the

presence of Naqishbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. Hegde, J. speaking on behalf of the Court countered the argument that Naqishbund did not take part in the deliberations of the Selection Board when his name was considered, by saying: (SCC p. 270, para 15)

> "But then the very fact that he was a member of the Selection Board must have had its own impact on the decision of the Selection Board. Further admittedly he participated in the deliberations of the Selection Board when the claims of his rivals ... was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the Selection Board there was a conflict between his interest and duty.... The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.... There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

This Court emphasised that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of

relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

18. The procedural fairness is a mandatory ingredient to protect an arbitrary action. Rule of natural justice is not codified canon. The Supreme Court in the case of **Canara Bank and others v. Debasis Das and others reported in (2003) 4 SCC 557** has held as under:-

> 13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.
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> 14. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.
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> 15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle

is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works [(1863) 143 ER 414 : 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] the principle was thus stated: (ER p. 420)

> "[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?' "

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order

affecting those rights. These rules are intended to prevent such authority from doing injustice.

17. What is meant by the term "principles of natural justice" is not easy to determine. Lord Summer (then Hamilton, L.J.) in R. v. Local Govt. Board [(1914) 1 KB 160 : 83 LJKB 86] (KB at p. 199) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Spackman [1943 AC 627 : (1943) 2 All ER 337 : 112 LJKB 529 (HL)] Lord Wright observed that it was not desirable to attempt "to force it into any Procrustean bed" and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give "a full and fair opportunity" to every party of being heard.

18. Lord Wright referred to the leading cases on the subject. The most important of them is Board of Education v. Rice [1911 AC 179 : 80 LJKB 796 : (1911-13) All ER Rep 36 (HL)] where Lord Loreburn, L.C. observed as follows: (All ER p. 38 C-F)

> "Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. … The Board is in the nature of the arbitral

> tribunal, and a court of law has no jurisdiction to hear appeals from their determination, either upon law or upon fact. But if the court is satisfied either that the Board have not acted judicially in the way which I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that "the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, L.O. in Spackman v. Plumstead District Board of Works [(1885) 10 AC 229 : 54 LJMC 81 : 53 LT 151] where the learned and noble Lord Chancellor observed as follows:

> "No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such

considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oftquoted phrase "justice should not only be done, but should be seen to be done".

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

20. Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura [(1855) 2 Macq 1 : 25 LTOS 282 (HL)] (Macq at p. 8), Lord Cranworth defined it as "universal justice". In James Dunber Smith v. Her Majesty the Queen [(1877-78) 3 AC 614 (PC)] (AC at p. 623) Sir Robort P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial justice", while in Arthur John Spackman v. Plumstead District Board of Works [(1885) 10 AC 229 : 54 LJMC 81 : 53 LT 151] (AC at p. 240), the Earl of Selbourne, S.C. preferred the phrase "the substantial requirement of justice". In Vionet v. Barrett [(1885) 55 LJRD 39] (LJRD at p. 41), Lord Esher, M.R. defined natural justice as "the natural sense of what is right and

wrong". While, however, deciding Hookings v. Smethwick Local Board of Health [(1890) 24 QBD 712] Lord Esher, M.R. instead of using the definition given earlier by him in Vionet case [(1885) 55 LJRD 39] chose to define natural justice as "fundamental justice". In Ridge v. Baldwin [(1963) 1 QB 539 : (1962) 1 All ER 834 : (1962) 2 WLR 716 (CA)] (QB at p. 578), Harman, L.J., in the Court of Appeal countered natural justice with "fair play in action", a phrase favoured by Bhagwati, J. in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : (1978) 2 SCR 621] . In H.K. (An Infant), Re [(1967) 2 QB 617 : (1967) 1 All ER 226 : (1967) 2 WLR 962] (QB at p. 630), Lord Parker, C.J. preferred to describe natural justice as "a duty to act fairly". In Fairmount Investments Ltd. v. Secy. of State for Environment [(1976) 1 WLR 1255 : (1976) 2 All ER 865 (HL)] Lord Russell of Killowen somewhat picturesquely described natural justice as "a fair crack of the whip" while Geoffrey Lane, L.J. in R. v. Secy. of State for Home Affairs, ex p Hosenball [(1977) 1 WLR 766 : (1977) 3 All ER 452 (CA)] preferred the homely phrase "common fairness".

21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" as stated in Earl of Derby's case [(1605) 12 Co Rep 114 : 77 ER 1390] that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa, quia non potest esse judex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge

in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see Boswel's case [(1605) 6 Co Rep 48b : 77 ER 326] (Co Rep at p. 52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

22. What is known as "useless formality theory" has received consideration of this Court in M.C. Mehta v. Union of India [(1999) 6 SCC 237] . It was observed as under: (SCC pp. 245-47, paras 22-23)

> "22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed see Malloch v. Aberdeen Corpn. [(1971) 2

All ER 1278 : (1971) 1 WLR 1578 (HL)] (per Lord Reid and Lord Wilberforce), Glynn v. Keele University [(1971) 2 All ER 89 : (1971) 1 WLR 487] , Cinnamond v. British Airports Authority [(1980) 2 All ER 368 : (1980) 1 WLR 582 (CA)] and other cases where such a view has been held. The latest addition to this view is R. v. Ealing Magistrates' Court, ex p Fannaran [(1996) 8 Admn LR 351] (Admn LR at p. 358) [see de Smith, Suppl. p. 89 (1998)] where Straughton, L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in Lloyd v. McMahon [(1987) 1 All ER 1118 : 1987 AC 625 : (1987) 2 WLR 821 (CA)] has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant [1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood — not certainty — of prejudice'. On the other hand, Garner's Administrative Law (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935 (HL)] , Megarry, J. in John v. Rees [(1969) 2 All ER 274 : 1970 Ch 345 : (1969) 2 WLR 1294] stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that

'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton [1990 IRLR 344] by giving six reasons. (See also his article 'Should Public Law Remedies be Discretionary?' 1991 PL, p. 64.) A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that Malloch [(1971) 2 All ER 1278 : (1971) 1 WLR 1578 (HL)] and Glynn [(1971) 2 All ER 89 : (1971) 1 WLR 487] were wrongly decided. Foulkes (Administrative Law, 8th Edn., 1996, p. 323), Craig (Administrative Law, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their

> 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , Rajendra Singh v. State of M.P. [(1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.
>
> 23. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as in the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J."

19. Since the Presenting Officer himself was the complainant and he had appeared as a witness and thereafter as a Presenting Officer, he was required to justify his evidence, this Court is of the considered opinion that real prejudice has been caused to the petitioner because such an act of the Presenting Officer cannot be said to be beyond bias. It is true that the en quiry report was to be given by the Inquiry Officer, but the petitioner has also raised an objection with regard to the close association of the Inquiry Officer with the Presenting Officer. Furthermore, the Inquiry Officer has to decide the matter on the basis of material produced by the Presenting Officer. Therefore, the respondents had caused serious prejudice to the petitioner.

20. Under these circumstances, this Court is of the considered opinion that entire departmental

> inquiry was vitiated, therefore, it is not necessary for this Court to adjudicate as to whether the departmental inquiry could have been done in respect of old charges or not."

17. Under these circumstances, this Court is of the considered opinion that since Dr.Utpal Debnath continued to act as a Presenting Officer and the possibility of biases against the petitioner are not ruled out, specifically when one of the charges were in relation to the Vice-Chancellor also, this Court is of the considered opinion that the departmental enquiry is vitiated from the stage of appointment of Dr.Utpal Debnath as Presenting Officer.

18. Accordingly, the same is **quashed**. The respondent/University is permitted to proceed further with the departmental enquiry after appointing a new Presenting Officer.

19. With aforesaid observation, the petition **succeeds** and is hereby **allowed.**

(G.S.AHLUWALIA)
JUDGE

TG/-