HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 15551/2023

Munesh Gurjar

----Petitioner

Versus

1. The State of Rajasthan, through Additional Chief Secretary Department of Local Self Bodies, Govt. of Rajasthan, Govt. Secretariat, Jaipur (Raj.).
2. The Director and Special Secretary, Local Bodies Department, G-3, Rajmahal, Residency Area, Near Civil Lines Phatak, C-Scheme, Jaipur- 302005.

----Respondents

For Petitioner(s) : Mr.Vigyan Shah & Mr.Akshit Gupta, Advocates.

For Respondent(s) : Mr.Anil Mehta, Additional Advocate General assisted by Mr.Yashodhar Pandey, Advocate.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

RESERVED ON : 28/11/2023

PRONOUNCED ON : 01/12/2023

Order

REPORTABLE

BY THE COURT:

1. The petitioner was elected as Mayor of the Jaipur Municipal Corporation – Heritage and she has been placed under suspension, vide impugned order dated 22.09.2023, by the respondents, by invoking the power contained under Section 39(6) of the Rajasthan Municipalities Act, 2009 (for short "the Act of 2009").

2. Feeling aggrieved by the suspension order and the proceedings initiated against the petitioner, she has approached this Court, by filing the present petition under Article 226 of the Constitution of India, with the following prayer:-

> "In these circumstances, it is, therefore, prayed that this Hon'ble Court may be pleased to accept this writ petition and;
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> i) The impugned suspension order dated 22.09.2023 in respect of humble petitioner suspending her from the post of Mayor, Municipal Corporation Jaipur – Heritage as well as member of Ward No.43 of Municipal Corporation Jaipur – Heritage by the State respondents by invoking power under Section 39(6) of Rajasthan Municipalities Act, 2009 may kindly be declared illegal and arbitrary and therefore, same may kindly be quashed and set aside;
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> ii) The impugned order no.P.2(Cha)/__/ACB/Janch/DLC/23/Spa-2 dated 05.08.2023 passed by Director, Local Self Department to authorize Deputy Director to conduct the preliminary inquiry as well as the impugned preliminary report dated 16.08.2023 may kindly be declared illegal, arbitrary being in violation of provisions of the Rajasthan Municipalities Act, 2009 and therefore, same may kindly be quashed and set aside;
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> iii) by issuing the writ of mandamus, order or direction in the nature thereof respondents may kindly be restrained from taking any other coercive action against the petitioner;
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> iv) respondents be directed to allow the petitioner to discharge the functions of Mayor, Municipal Corporation Jaipur – Heritage as well as member of Ward No.43 of Municipal Corporation, Jaipur – Heritage by restoring her on the aforesaid posts;
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> v) any order passed by the respondents to initiate judicial inquiry and any such process of judicial enquiry based upon preliminary inquiry report dated 16.08.2023 and suspension order dated 22.09.2023 during the pendency of the writ petition may be declared illegal and arbitrary and therefore, same may kindly be quashed and set aside and;
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> vi) Any other appropriate order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of this case my also be passed in favour of the Petitioner."

3. By way of filing the instant petition, the petitioner has not only challenged her suspension order dated 22.09.2023, but also the entire process including the Preliminary Enquiry conducted by the respondents.

4. Learned counsel for the petitioner submits that the Director, Department of Local Bodies, Government of Rajasthan was not competent to appoint the Deputy Director (Regional) (for short "the DDR") as Enquiry Officer to conduct the Preliminary Enquiry against the petitioner. Counsel submits that the DDR was the Officer-in-Charge (for short "the OIC") in the early Writ Petition No.12675/2023, submitted by the petitioner, hence, she was an interested person/party. Counsel submits that simultaneously two different notices were issued not only by the Director but also by the DDR on the same day i.e. on 11.08.2023. Counsel submits that at the time of issuing notices to the petitioner, the relevant background and materials were not provided to her, hence, under those circumstances a detailed application was submitted on 23.08.2023 before the Director, Local Bodies Department, for providing the same for submitting appropriate reply. Counsel submits that the aforesaid application, filed by the petitioner, was treated as reply to the notices and on the basis of the same, the Enquiry Report was prepared by the DDR on 16.08.2023 and on the basis of the same, the petitioner has been placed under suspension vide order dated 22.09.2023. Counsel submits that as per the mandate contained under Section 39 of the Rajasthan

Municipalities Act, 2009, the orders should have been passed by the State. Counsel submits that the word "State" has not been defined under the provisions contained under the Act of 2009. Hence, as per the provisions contained under the General Clauses Act 2009, the State means – the Governor of the State. Counsel submits that without getting any order in this regard and without holding any enquiry, the Director, Local Bodies Department has not only issued the notice, but also appointed the DDR to conduct the Preliminary Enquiry against the petitioner. Counsel submits that as per the mandate, contained under the Rajasthan Rules of Business, the approval of the Chief Minister should have been taken, before taking any action against the petitioner but flouting the procedure, contained under the Rules of Business, the impugned action has been taken against the petitioner. Hence, the entire proceedings initiated against the petitioner are vitiated and the same are not tenable in the eye of law. In support of his contention, counsel has placed reliance upon the following judgments:-

i. **Gulabrao Keshvrao Patil vs. State of Gujrat** reported in **(1996) 2 SCC 26**,

ii. **State of U.P. vs. Saroj Kumar Sinha** reported in **(2010) 2 SCC 772**,

iii. **Union of India Vs. Ram Lakhan Sharma** reported in **(2018) 7 SCC 670**,

iv. **Ranjit Thakur Vs. Union of India** reported in **(1987) 4 SCC 611**,

v. **P.D. Dinakaran (10 vs. Judges Inquiry Committee** reported in **(2011) 8 SCC 380**,

vi. **Govt. of T.N. vs. Munuswamy Mudaliar** reported in **1988 Supp SCC 651**,

vii. **Sahni Silk Mills (P) Ltd. Vs. ESI Corpn.** reported in **(1994) 5 SCC 346**,

viii. **Mungulal Chunilal Vs. Manilal Maganlal** reported in **(1968) 2 SCR 401**,

ix. **Vimla Devi Vs. State of Rajasthan** reported in **2007 SCC OnLine Raj. 458**,

x. **Nand Lal Vs. State of Rajasthan** reported in **1995 SCC OnLine Raj. 303,**

xi. **Jan Mohd. V. State of Rajasthan** reported in **1992 SCC OnLine Raj 21,**

xii. **Ugamsee Modi Vs. State of Rajasthan** reported in **1961 SCC OnLine Raj 68**; and

xiii. **Union of India & Ors. Vs. Gyan Chand Chattar** reported in **(2009) 12 SCC 78**.

5. Learned counsel for the petitioner submits that the charges framed against the petitioner were not definite and specific and the same were contrary to the record, as neither the husband of the petitioner nor the petitioner were caught red-handed for the allegations levelled against them. Counsel submits that two vague charges have been framed against the petitioner, while issuing notice to her but while preparing the Enquiry Report, Charge No.3 was mentioned only on the personal knowledge of the Enquiry Officer, who was the OIC, in the earlier writ petition, on the basis of the averments made by the petitioner in the earlier writ petition. Counsel submits that under these circumstances, the entire proceedings have been vitiated and the interference of this Court is warranted.

6. Per contra, counsel for the respondents opposed the arguments made by the counsel for the petitioner and submitted that looking to the gravity of the matter and looking to the material available against the petitioner, a decision was taken by the Director, Local Bodies Department to conduct enquiry against the petitioner and place her under suspension. Counsel submits that approval was granted by the Minister of the Department on 05.08.2023 and thereafter, the matter was proceeded against the petitioner. Counsel further submits that the Preliminary Enquiry was conducted by the DDR in pursuance of the directions issued by the State. Counsel further submits that the Rules of Business are directory in nature and the same are not mandatory. Counsel further submits that after following the provisions, contained under Section 123 of the Act of 2009, the proceedings have been initiated against the petitioner and she has been rightly placed under suspension vide order dated 22.09.2023 and in support of his contentions, the counsel has placed reliance upon the following judgments:

i) **Champaklal Chimanlal Shah Vs. Union of India** reported in **(1964) 5 SCR 190**

ii) **Narmada Bachao Andolan vs. State of Madhya Pradesh** reported in **(2011) 12 SCC 333**; and

iii) **Devender Singh Shekhawat Vs. State of Rajasthan : S.B. Civil Writ Petition No. 14381/2023**

7. Counsel submits that in view of the submissions made hereinabove interference of this court is not warranted. The petition is liable to be rejected.

8. Heard and considered the rival submissions made at Bar and perused the original record and the material, made available to the Court.

9. The provisions contained under Section 39 of the Act of 2009 deals with the procedure for suspension and removal of a member or Municipality, on the grounds mentioned under sub-section (1) of Section 39 of the Act of 2009. For ready reference Section 39 is reproduced as under:-

> "**39. Removal of member**. - (1) The State Government may, subject to the provisions of sub-Sections (3) and (4), remove a member of a Municipality on any of the following grounds, namely: -
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> (a) that he has absented himself for more than three consecutive general meetings, without leave of the Municipality: Provided that the period during which such member was a jail as an under trial prisoner or as a detenue or as a political prisoner shall not be taken into account,
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> (b) that he has failed to comply with the provisions of Section 37,
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> (c) that after his election he has incurred any of the disqualification mentioned in Section 14 or Section 24 or has ceased to fulfill the requirements of Section 21,
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> (d) that he has
>
> (i) deliberately neglected or avoided performance of his duties as a member, or
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> (ii) been guilty of misconduct in the discharge of his duties, or
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> (iii) been guilty of any disgraceful conduct, or
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> (iv) become incapable of performing his duties as a member, or
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> (v) been disqualified for being chosen as member under the provisions of this Act, or

(vi) otherwise abused in any manner his position as such member:

Provided that an order of removal shall be passed by the State Government after such inquiry as it considers necessary to make either itself or through such existing or retired officer not below the rank of State level services or authority as it may direct and after the member concerned has been afforded an opportunity of explanation.

(2) The power conferred by sub-Section (1) may be exercised by the State Government of its own motion or upon the receipt of a report from the Municipality in that behalf or upon the facts otherwise coming to the knowledge of the State Government: Provided that, until a member is removed from office by an order of the State Government under this Section, he shall not vacate his office and shall, subject to the provisions contained in sub-Section (6), continue to act as, and exercise all the powers and perform all the duties of, a member and shall as such be entitled to all the rights and be subject to all the liabilities, of a member under this Act.

(3) Notwithstanding anything contained in sub-Section (1) where it is proposed to remove a member on any of the grounds specified in clause (c) or clause (d) of sub-Section (1), as a result of the inquiry referred to in the proviso to that sub-Section and after hearing the explanation of the member concerned, the State Government shall draw up a statement setting out distinctly the charge against the member and shall send the same for enquiry and findings by Judicial Officer of the rank of a District Judge to be appointed by the State Government for the purpose.

(4) The Judicial Officer so appointed shall proceed to inquire into the charge, hear the member concerned, if he makes appearance, record his findings on each matter embodied in the statement as well as on every other matter he considers relevant to the charge and send the record along with such findings to the State Government, which shall thereupon either order for re-inquiry, for reasons to be recorded in writing, or pass final order.

(5) While hearing an inquiry under sub-Section (4), the Judicial Officer shall observe such rules of procedure as may be prescribed by the State Government and shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) while trying a suit in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any such document or any other material as may be predicable in evidence;

(c) requisitioning any public record; and

(d) any other matter which may be prescribed.

(6) Notwithstanding the foregoing provisions of this Section, the State Government may place under suspension a member against whom proceedings have been commenced under this Section until the conclusion of the inquiry and the passing of the final order and the member so suspended shall not be entitled to take part in any proceedings of the Municipality or otherwise perform the duties of a member thereof.

(7) Every final order of the State Government passed under this Section shall be published in the Official Gazette and shall be final and no such order shall be liable to be called in question in any Court."

10. Perusal of Section 39(6) of the Act of 2009 shows that the State Government has power to place a member of the Municipality under suspension where proceedings have been commenced against him/her until the conclusion of the inquiry and passing of the final order under Section 39 of the Act of 2009. Interpreting the aforesaid provisions contained under Section 39(6) of the Act of 2009, a consistent view has been taken in this regard, by this Court in the cases of **Rajaram Gurjar Vs. State of Rajasthan & Ors. [S.B.Civil Writ Petition No.21332/2019]** decided on 14.02.2020; **Nirmal Kumar Pitaliya Vs. State of Rajasthan** reported in **2022 (1) RLW 494**; **Bharat Lal Saini Vs. State of Rajasthan & Ors. [S.B.Civil Writ Petition No.13062/2022]** decided on 16.02.2023; and **Devender Singh Shekhawat Vs. State of**

11. To satisfy the Court, about the action of the respondents, whether the Enquiry Officer and the OIC of the case were one and the same person or not, whether there was biasness against the petitioner or not and what were the charges against the petitioner, this Court directed the Additional Advocate General, appearing for the respondent-State, to submit the original record, for perusal of this Court. In compliance of the same, the original record has been produced, which indicates that the Anti Corruption Bureau (for short "the ACB") received a complaint wherein allegations were levelled against the husband of the petitioner namely Sushil Gurjar and two other persons namely Narayan Singh and Anil Dubey to the effect that they were harassing the complainant, by demanding Rs.2,00,000/- (Rupees Two Lakhs) for issuing patta. Upon receipt of the above complaint, the trap proceedings were conducted by the ACB and all the above three persons were arrested and during the course of search of the house of the petitioner, in her presence, a sum of Rs.40,00,000/- (Rupees Forty Lakhs) were recovered and the relevant patta file was also recovered from the house of the husband of the petitioner and thereafter, a case was registered under the Prevention of Corruption Act, 1988.

12. Upon receipt of the above complaint, the matter was taken up and forwarded to the Director, Department of Local Self Bodies and he made the following proposal on 05.08.2023 "She is

proposed to be placed under suspension immediately. DDR, Jaipur may be directed to conduct the enquiry in the matter." The aforesaid proposal was approved by the Cabinet Minister of the Department of Local Self Bodies, Government of Rajasthan and accordingly, the petitioner was initially placed under suspension on 05.08.2023 and a show cause notice was issued to her under Section 39(1) of the Act of 2009.

13. The petitioner challenged the above suspension order dated 05.08.2023 before this Court by way of filing S.B.Civil Writ Petition No.12675/2023 wherein notices were issued to the respondents. After receipt of the notices, the DDR was appointed as Officer-in-Charge (for short "the OIC") to defend the matter against the petitioner before this Court on behalf of the respondents. The order appointing the DDR, as the OIC was issued on 08.08.2023 and 10.08.2023 and accordingly, the OIC i.e. DDR submitted reply to the aforesaid earlier Writ Petition by signing the same and her own oath affidavits were annexed with the reply.

14. Prior to appointing the DDR – Arshdeep Barar, as the OIC in the above writ petition, she was appointed as Enquiry Officer on 05.08.2023 to conduct enquiry against the petitioner and submit report in terms of Section 39 of the Act of 2009 and thereafter, the DDR issued notice to the petitioner on 11.08.2023 and on the very same day the other notice with two charges was issued to the petitioner by the Director, Department of Local Self Bodies directing her to submit her reply. In response to the above notice dated 11.08.2023, the petitioner submitted an application to get

certain information and documents on 16.08.2023. Treating the aforesaid application of the petitioner, as her reply to the notice, the DDR submitted her Enquiry Report to the Director, Department of Local Self Bodies on the same day i.e. on 16.08.2023 holding the petitioner guilty of disgraceful conduct under Section 39(1) of the Act of 2009.

15. In the meantime, the suspension order dated 05.08.2023 was stayed by this Court, by passing an interim order dated 23.08.2023. Thereafter, the respondents recalled and withdrew the suspension order dated 05.08.2023, vide order dated 01.09.2023. Then again, on the basis of the Enquiry Report dated 16.08.2023, the notice dated 17.08.2023 was issued to the petitioner. Thereafter, the application was filed by the petitioner for getting certain documents but the said application of the petitioner was treated as her reply and the same was not found to be satisfactory and by exercising the powers contained under Section 39(3) of the Act of 2009, a judicial enquiry was initiated against her and again she was placed under suspension, in exercise of the powers contained under Section 39(6) of the Act of 2009, vide order dated 22.09.2023 passed by the Director, Department of Local Self Bodies.

16. This Court does not find any substance in the argument raised by the petitioner that the Director was not competent to pass the suspension order dated 22.09.2023 as he does not fall within the meaning of the "State". Perusal of the original record indicates that proposal of suspension of the petitioner was

approved by the concerned Cabinet Minister of the Department of Local Self Bodies, Government of Rajasthan. Thereafter, the order of suspension has been passed on 22.09.2023 under the orders of His Excellency the Governor of Rajasthan. This Court is not satisfied with the argument of the petitioner that the suspension order dated 22.09.2023 was not in consonance with the Business Rules of the State because Business Rules of the State are directory in nature and the same are not mandatory in nature, as it has been held by the Apex Court in the case of **Narmada Bachao Andolan** (supra).

17. Now the main issue which remains for consideration of this Court is "Whether the OIC of the case can be appointed as Enquiry Officer to conduct enquiry against the petitioner or not?"

18. The DDR was appointed as Enquiry Officer on 05.08.2023 to conduct enquiry against the petitioner and on 08.08.2023 and 10.08.2023 she was appointed as the OIC by the respondents to contest the matter against the petitioner before this Court in the earlier Writ Petition No.12675/2023 and she has submitted reply and affidavits against the petitioner in the above writ petition, in the capacity of the OIC in her own signatures on oath before this Court and in the meantime, the same OIC as Enquiry Officer, issued notice to the petitioner on 11.08.2023. The petitioner submitted an application before the Director on 16.08.2023 seeking certain information and documents for filing reply to the notice dated 11.08.2023 but treating the aforesaid application, as reply of the petitioner, the said OIC submitted her Enquiry Report

in the capacity of Enquiry Officer on the same day i.e. 16.08.2023, by inserting additional charge No.3 to the effect that looking to the contents of the Writ Petition No.12675/2023, the stand of the petitioner was contradictory.

It appears that there was total non-application of mind on behalf of the Enquiry Officer i.e. the DDR, as she treated the petitioner's application seeking documents as reply and the Enquiry Report was submitted on the very same day i.e. on 16.08.2023.

19. While pendency of the earlier Writ Petition, the Enquiry Officer was assigned dual role against the petitioner. She has not only acted as the OIC but also acted as the Enquiry Officer against the petitioner. It may have been more apposite for the DDR i.e. the Enquiry Officer to have recused from being appointed as the OIC against the petitioner, in the earlier writ petition. The Enquiry Officer should not have accepted the charge of OIC, to plead on behalf of the respondents before this Court. Her role as OIC reflected her interference in the matter. Hence, under these circumstances, there was likelihood of biasness. Dealing with the similar situation in the case of **State of West Bengal Vs. Shivananda Pathak** reported in **(1998) 5 SCC 513**, the Hon'ble Apex Court has held in para 34 as under:-

> "34. In Metropolitan Properties Co. v. Lannon, (198) W.L.R. 815, it was observed "whether there was a real likelihood of bias or not has to be ascertained with reference to right minded persons; whether they would consider that there was a real likelihood of bias". Almost the same test has also been applied here in an old decision, namely, in Manak Lal Vs. Prem Chand, AIR 1957 SC 425. In that case, although the

> Court found that Chairman of the Bar Council Tribunal, appointed by the Chief Justice of the Rajasthan High Court, to enquire into the misconduct of Manak Lal, an Advocate, on the complaint of one Prem Chand, was not biased towards him, it was held that he should not have presided over the proceedings to give effect to the salutory principle that justice should not only be done, it should also be seen to be done in view of the fact that the Chairman, who, undoubtedly, was a Senior Advocate and an ex-Advocate General, had, at one time, represented Prem Chand in some case. These principles have had their evolution in the field of Administrative Law but the Courts performing judicial functions only cannot be excepted from the rule of bias as the Presiding Officers of the Court have to hear and decide contentious issues with an unbiased mind. The maxim *Nemo Debet Esse Judex In Propria Sua Causa* and the principle "Justice should not only be done but should manifestly be seen to be done" can be legitimately invoked in their cases."

20. It is well established principle of law that the Enquiry Officer should remain free from bias and should not create any apprehension in the mind of the delinquent that the Enquiry Officer may play the game of hide and seek. Ms.Arshdeep Barar was appointed as Enquiry Officer on 05.08.2023 to conduct enquiry against the petitioner and the respondents were well aware of this fact, even then, she was appointed as OIC against the petitioner, in the writ petition filed by her, to put forward the stand of the respondents before this Court.

It is true that there are no Rules which regulate the duty of Enquiry Officer but it does not allege that the Rules of Natural Justice can be given 'go-bye'. It is the duty of the Enquiry Officer to uphold the interest of the enquiry proceedings by all fear and honourable means. Therefore, the Hon'ble Supreme Court in the case of **Kokkanda B. Poondacha and Others Vs. 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. 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:
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> > (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.
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> > 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."

21. The Enquiry Officer has a duty to be discharged by him/her in the inquiry and in case, if he/she appears as a complainant and witness, then there is every possibility of bias as his/her primary concern would be to ensure that the guilt of the delinquent is proved by hook and crook. 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."

22. Since the DDR was not only the Enquiry Officer, but she was also the OIC in the earlier writ petition, therefore, the possibility of her bias cannot be ruled out. Principle of ***nemo judex in propria causa sua*** would certainly apply in the present case because one of the fundamental principles of jurisprudence is that no one can be a Judge in his own cause.

23. 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.

24. 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:

> "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."

25. The procedural fairness is a mandatory ingredient to protect an arbitrary action. Rule of natural justice is not a codified canon. The Hon'ble 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 commonsense 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.

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.

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 of15 Works [(1863) 143 ER 414 : 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] the principle was thus stated:

> "Even 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 : (191113) 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 oft quoted 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. 2763) 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."

26. Since the Enquiry Officer herself was the Officer-in-Charge of the case and had appeared as the OIC in the earlier Writ Petition No.12675/2023 by submitting report, reply and affidavits against the petitioner before this Court, this Court is of the considered opinion that real prejudice has been caused to the petitioner because such an act of the Enquiry Officer cannot be said to be beyond bias. The Enquiry Officer has submitted her report on 16.08.2023, without getting the reply of the petitioner and treating the petitioner's application, seeking information and documents, as her reply. On the basis of the adverse Enquiry Report submitted by the Enquiry Officer, notice was issued to the petitioner on 17.08.2023 and she was again placed under suspension vide impugned order dated 22.09.2023. Such act of the Enquiry Officer has created apprehension in the mind of the petitioner that the Enquiry Officer has acted against her in dual capacity, with bias, i.e. as Enquiry Officer and Officer-in-Charge of the case to contest the matter against her to defeat her.

27. It is well established principle, both in Indian Legal Jurisprudence and across the World, that the principles of natural

justice must be followed before passing any adverse order against the affected party. The first rule is "***nemo judex in causa sua***" means, no one should be a judge in his own cause and the second rule is "***audi alteram partem***" that is 'hear the other side'. Over the years by a process of judicial interpretation, the above 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.

28. In the case of **State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha** reported in **(2010) 2 SCC 772**, the Hon'ble Supreme Court has held that an Enquiry Officer, acting as a quasi-judicial authority, is in the position of an independent adjudicator. He is not supposed to be a representative of the department. The Hon'ble Supreme Court has held in paragraphs 28 to 30, as follows:-

> "28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.
>
> 29. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a

basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

29. Similarly, in the case of **Union of India & Ors. Vs. Ram Lakhan Sharma** reported in **(2018) 7 SCC 670**, the Hon'ble Apex Court has held that the Enquiry Officer is holding the position of an independent adjudicator and he is obliged to act fairly, impartially and has to act in good faith without bias.

30. A Constitutional Bench of the Hon'ble Supreme Court has elaborately considered and explained the principles of natural justice in the case of **A.K.Kraipak Vs. Union of India** reported in **(1969) 2 SCC 262** and has held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognized as consisting of two principles, that is, no one shall be a judge in his own cause and no decision shall be given against a party, without affording him a reasonable hearing, various other facets have been recognized. In para 20 the following has been held:

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of

> justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon there- after a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably…."

31. The other Rule of Law, as defined by the maxim "***nemo debet esse judex in propria sua causa***" means "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 open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated. By appointing a new independent Enquiry Officer, the respondents can proceed against the petitioner in accordance with law. By doing so, the interest of both the parties would be protected.

32. Under these circumstances, this Court is of the considered opinion that the entire Preliminary Enquiry, conducted against the petitioner, by the Enquiry Officer is vitiated and the Enquiry Report dated 16.08.2023 is quashed and set aside and in consequence thereof, the suspension order dated 22.09.2023 also stands quashed and set aside.

33. Consequently, the instant writ petition stands partly allowed with direction to the respondents to appoint a new Enquiry Officer

forthwith to conduct enquiry against the petitioner afresh, pertaining to the allegations levelled against her. The respondents are expected to proceed with the matter in accordance with law, after affording opportunity of hearing to the petitioner, expeditiously, as early as possible, preferably within a period of one month after receipt of this order.

34. Stay application and all applications (pending, if any) also stand disposed of. No order as to costs.

35. Before parting with the order, it is made clear that the respondents/authorities shall conclude the enquiry, on the merits of the case, without being influenced by any of the observations made by this Court.

(ANOOP KUMAR DHAND),J

Solanki DS, PS