Chief Justice Court
Additional Cause List
Serial No.2

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
(Lucknow)
***

SPECIAL APPEAL No. - 497 of 2021
(in W.P. No.36672 (M/S) of 2018)

Reserved on December 10, 2021
Delivered on January 04, 2022

Durgawati Singh and others

...Petitioner

Through :- Mr. Sharad Pathak,
Advocate

v/s

Deputy Registrar, Firms, Societies
& Chits Lucknow and others

....Respondents

Through :- Mr. Sudeep Kumar,
Advocate

Coram : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.

ORDER

JASPREET SINGH,J.

01. More often that not the Courts are faced with the dilemma over the breach of Rules of natural justice and the Court's discretion to refuse relief, even though Rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party. This is the core issue involved in the instant intracourt appeal.

02. Shri Sharad Pathak, learned counsel for the appellants has moved Civil Misc. Application No.165247 of 2021 seeking leave to prefer

this intracourt appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 challenging the order passed by the learned Single Judge dated 08.10.2021 in Writ Petition No.36672 (M/S) of 2018 on the ground that an issue regarding the validity of the membership of Shri Saraswati Vidyalaya Samiti was before the Deputy Registrar, Firms, Societies and Chit, Lucknow (hereinafter referred to as "Deputy Registrar"), who after hearing the matter, passed an order dated 07.12.2018 upholding the list of the members of the society which included the names of the present appellants.

03. This order dated 07.12.2018 passed by the Deputy Registrar was challenged by Shri Ajit Kumar Jaiswal in his individual capacity in Writ Petition No.36672 (M/S) of 2018. The learned Single Judge, after hearing the parties, allowed the writ petition by means of the impugned order dated 08.10.2021, as a result, the membership of the appellants which was upheld by the Deputy Registrar, has been set aside and this has caused prejudice as the learned Single Judge passed the order without affording any opportunity of hearing to the appellants and they were not even impleaded as parties in the writ petition and thus, the impugned order has been passed behind the back of the appellants. Since, the appellants were not parties to the writ petition and they are aggrieved by the impugned order, hence, the leave to appeal is being sought.

04. The leave to appeal is granted and the Court has proceeded to hear the learned counsel for the parties on merits of the appeal.

05. The contention of the learned counsel for the appellants is that they are bonafide members of the Society namely Shri Saraswati Vidyalaya Samiti, Khiro, Raebareli. They had deposited their requisite membership fee and are entitled to exercise their membership rights including to participate in the elections of Committee of Management.

06. It is urged that election of the Society was held by the private-respondents with only 22 Members whereas the appellants were conveniently ignored and not permitted to participate and in the aforesaid backdrop the said elections were challenged.

07. The matter was considered by the Deputy Registrar and vide order dated 07.12.2018, 22 Members which were inducted by Shri Udai Bhan Mishra were found to be bonafide members and it was held that the list of General Body for the year 2018-19 presented by Shri Ajit Kumar Jaiswal was got fraudulently registered on the basis of improper and manufactured documents.

08. It is further urged that the said order dated 07.12.2018 passed by the Deputy Registrar was assailed by Ajit Kumar Jaiswal in his individual capacity before this Court in Writ Petition No.36672 (M/S) of 2018. Two other writ petitions bearing Writ Petition No.8273 (M/S) of 2019, titled as "Committee of Management, Sri Saraswati Vidyalaya Samiti v. State of U.P. and others", and Writ Petition No.12551 (M/S) of 2021, titled as "Udai Bhan Mishra v. State of U.P. and others", were also connected and all the three writ petitions were disposed by means of the impugned order dated 08.10.2021 and the entire matter of membership has been remitted to the

Deputy Registrar to be decided afresh and this order has caused prejudice as the same has been passed without affording an opportunity of hearing to the appellants.

09. In support of his submissions, learned counsel for the appellants has relied upon the decision of the Apex Court in **Institute of Chartered Accountant of India v. L.K. Ratna and others, (1986) 4 SCC 537,** wherein it has been held that an opportunity of hearing must be given to a party before an order is passed which affects his rights.

10. Per contra, Shri Sudeep Kumar, learned counsel appearing for the respondents No.3 and 4 has submitted that no prejudice has been caused to the present appellants. The emphasis is that the appellants are not the members of the Society, hence, they were not entitled to any hearing. Moreover, the issue regarding the membership has not been finally decided and the matter has been remitted to the Deputy Registrar for its fresh consideration, hence, in absence of any final decision, at this stage, it cannot be said that the appellants have been prejudiced.

11. It is further urged that insofar as the order dated 07.12.2018 passed by the Deputy Registrar is concerned, the appellants were not noticed nor heard by the Deputy Registrar at the stage of passing of the order. The issue was primarily between the answering respondents and Udai Bhan Mishra. Udai Bhan Mishra had contested the proceedings before the learned Single Judge and by a reasoned order, the learned Single Judge has remitted the matter to the Deputy Registrar for deciding the issue of membership afresh after affording an opportunity of hearing to the parties concerned. If at

all the appellants have any grievance, they have a right to appear before the Deputy Registrar and raise all their grievances which can be suitably considered by the fact finding authority and as such no real prejudice has been caused and for the aforesaid reasons merely because the appellants were not heard, the order passed by the learned Single Judge may not be interfered with. Accordingly, the appeal deserves to be dismissed.

12. Learned counsel for the answering respondents has relied upon the decision of the Apex Court in the case **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others (2015) 8 SCC 519** to contend that principles of natural justice are flexible and in absence of real prejudice mere non grant of a hearing shall not affect the order.

13. The Court has heard learned counsel for the parties and also perused the record.

14. In order to appreciate the submissions of the learned counsel for the parties, few facts relevant, for adjudicating the issue involved in the instant appeal are being noticed hereinafter.

15. Writ Petition No.36672 (M/S) of 2018 was filed by Ajit Kumar Jaiswal and Committee of Management, Sri Saraswati Vidyalaya Samiti through its Manager assailing the order dated 07.12.2018 passed by the Deputy Registrar, by means of which, the dispute of membership of the Society was decided. The aforesaid writ petition was connected with two other writ petitions bearing Writ Petition No.8273 (M/S) of 2019 and Writ Petition No.12551 (M/S) of 2021.

16. Writ Petition No.8273 (M/S) of 2019 was filed against the order dated 06.03.2019 by which the Deputy Registrar directed for holding the elections. The other Writ Petition, bearing No.12551 (M/S) of 2021 was preferred by Udai Bhan Mishra challenging the order dated 01.10.2020 passed by the Additional Director, Secondary Education, Government of U.P., and the consequential order dated 25.05.2021 passed by the Joint Director of Education, 6th Region, U.P., Lucknow. By the order dated 01.10.2020, the Additional Director, Secondary Education set aside the order dated 13.08.2020 of the Regional Committee appointing an authorized controller in the institution and remanded the matter to the Joint Director of Education and by the consequential order dated 25.05.2021, the Joint Director of Education had directed for maintaining the status-quo as was existing prior to passing of the order dated 13.08.2020.

17. Since, all the three writ petitions, as mentioned above, were relating to the membership, management and affairs of Shri Saraswati Vidyalaya Samiti, Khiro, Raebareli, hence they were connected and heard together and disposed of by the learned Single Judge by means of the order dated 08.10.2021.

18. The learned Single Judge while considering Writ Petition No.36672 (M/S) of 2018 found that the Deputy Registrar had not considered the version of the respondents herein and also did not consider the documentary evidence, hence, without entering into the merits it had set aside the order dated 07.12.2018 and directed the Deputy Registrar to consider the issue of membership afresh and also whether the issue would be

decided by the Deputy Registrar or it is required to be referred to be Prescribed Authority.

19. Since, the issue in the other Writ Petition No.8273 (M/S) of 2019 was based primarily on the order dated 07.12.2018 which had been set aside and the impugned order being in consequence thereto, hence, the same was also set aside. Considering the third writ petition preferred by Udai Bhan Mishra, the learned Single Judge held that since the order dated 07.12.2018 had been set aside and all other orders were consequential including the order passed by the Additional Director dated 30.09.2020 and the consequential order dated 25.05.2021 and, if it were to set aside the said orders it would result in reviving an illegal order dated 13.08.2021, which is not legally permissible. Thus, with the aforesaid observations and directions, all the three writ petitions were disposed of.

20. At the outset, it will be relevant to notice the order dated 08.10.2021 passed by the learned Single Judge in relation to the Writ Petition No.36672 (M/S) of 2018 and in Paragraphs 12 and 18, it observed as under:-

> "**12.** Be it as it may, it is apparent that all the aforesaid relevant aspect are not considered by the Deputy Registrar in his impugned order dated 07.12.2018. In view thereof, without further going into the merits of the case or on the issue as to whether the Deputy Registrar had power under Section 25 of the Societies Registration Act to pass the impugned order dated 07.12.2018, the impugned order being passed without taking into consideration the relevant aspects of the matter, is set aside. It shall be open for the Deputy Registrar to proceed afresh and pass appropriate order with regard to elections of the Society strictly in accordance with law by giving proper opportunity of

> hearing to the parties concerned. The question as to whether the matter should be decided by the Deputy Registrar or be referred by him to the prescribed authority is also left open to be decided by the Deputy Registrar."
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> XXXX
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> **"18.** The entire matter of membership is remanded to the Deputy Registrar who shall decide the same in accordance with law after giving proper opportunity of hearing to the parties concerned on merits, including on issue whether the dispute is required to be referred to the Prescribed Authority, under Section 25 of the Societies Registration Act. The entire exercise should be concluded by the Deputy Registrar within a period of two months from the date a certified copy of this order is placed before him."

21. In the aforesaid backdrop, if the contention of the learned counsel for the parties is examined, certain undisputed facts which emerge are, that the question regarding the membership is primarily a question of fact which requires scrutiny of documents, resolutions and other piece of evidence. It is also undisputed that the appellants before the Court were not noticed by the Deputy Registrar at the time when the impugned order dated 07.12.2018 was passed. At the time of hearing and passing of the order dated 07.12.2018, the only two parties present were also available before the learned Single Judge, namely the respondents No.3 and 4, who preferred Writ Petition No.36672 (M/S) of 2018 and the respondents No.1 and 2, who were the respondents in the aforesaid writ petitions.

22. The learned Single Judge found that the contentions raised by the parties were not properly considered nor the effect of the documents was examined by the authority. It also found that the nature of the controversy involved could be resolved by considering various documents, vouchers, resolutions including certain letters which were available with the bank

which have been ignored. Thus, in the aforesaid circumstances, the order dated 07.12.2018 was set aside and the matter has been remanded to the said authority to decide the matter afresh after giving an opportunity of hearing to the parties concerned. It is not disputed that the issue of membership is open before the Deputy Registrar and the appellants being 'the party concerned' have a right to appear and raise all their contentions before the said authority.

23. In the backdrop of the aforesaid factual matrix, the core contention of the learned counsel for the appellants is that since the order dated 07.12.2018 had approved the membership of the appellants which has been set aside by the learned Single Judge, this in fact has cast a cloud over the membership and the order is visited with civil consequences. Hence, such an order could not be passed by the learned Single Judge without affording an opportunity of hearing to the appellants, thus, they have suffered grave prejudice.

24. The issue whether not granting a hearing in itself is a prejudice and violation of principles of natural justice and sufficient to grant relief to a party without showing actual prejudice caused to such a party has been the subject matter of judicial discourse and consideration, and its evolution over the decades can be seen with the help of the decisions of the Apex Court noticed hereinafter.

25. In some of the early judgments of the Apex Court, the non-observance of natural justice was said to be prejudice in itself to the person affected, and proof of prejudice, independent of proof of denial of natural

justice, was held to be unnecessary. The only exception to this rule is where, on "admitted or indisputable" facts only one conclusion is possible, and under the law only one penalty is permissible. In such cases, a Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because Courts do not issue writs which are "futile" - [see **S.L. Kapoor v. Jagmohan (1980) 4 SCC 379** at paragraph 24].

26. In ***K.L. Tripathi*** **v.** ***State Bank of India*** **(1984) 1 SCC 43**, the Apex Court held:

> "**29. ...** We are in agreement with the basic submission of Mr. Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence.
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> ***xxx xxx xxx***
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> 32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given

> some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.
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> 33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases."
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> (emphasis supplied)

27. In the Constitution Bench decision in **Managing Director, ECIL v. B. Karnakumar, (1993) 4 SCC 727**, the Apex Court, after discussing the constitutional requirement of a report being furnished under Article 311(2), held thus:

> "**30[v]** ... The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the

> employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.
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> **31.** Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.
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> (emphasis supplied)"

28. In **State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364**, the Apex Court distinguishing between "adequate opportunity" and "no opportunity at all", held that the "prejudice" exception operates more especially in the latter case. This judgment also speaks of procedural and substantive provisions of law which embody the principles of natural justice

which, when infracted, must lead to prejudice being caused to the litigant in order to afford him relief, and it held as under:-

> **32.** Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (*iii*) be in the interests of justice *or* would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.
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> **33.** We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
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> (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (*a*) the provision violated is of a substantive nature or (*b*) whether it is procedural in character.
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> (2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
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> (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has

prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(*a*) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(*b*) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it *or* that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions

(include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no *adequate* opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (*a*) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (*b*) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

29. In **Canara Bank v. V.K. Awasthy, (2005) 6 SCC 321**, the Apex Court held as under:-

> **"10.** The adherence to principles of natural justice as recognised by all civilised 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)
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> > "[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?' "
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> 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.
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> **11.** 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.

12. 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.

13. Lord Wright referred to the leading cases on the subject. The most important of them is the *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 that 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 emphasised 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 the Earl of Selbourne, L.C. in *Arthur John Spackman* v. *Plumstead Distt. 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".

14. 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 fact 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.

15. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew* v. *Drew and Leburn* [(1855) 2 Macq 1 : 25 LTOS 282 (HL)] (Macq at p. 8) Lord Cranworth defined it as "universal justice". In *James Dunber Smith* v. *R.* [(1878) 3 AC 614 (PC)] (AC at p. 623) Sir Robert 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 Distt. 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 *Hopkins* v. *Smethwick Local Board of Health* [(1890) 24 QBD 712 : 59 LJQB 250 : 62 LT 783 (CA)] Lord Fasher, 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 *HK (an infant), In re* [(1967) 2 QB 617 : (1967) 2 WLR 962 : (1967) 1 All ER 226] (QB at p. 530), 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 Willowan 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] preferred the homely phrase "common fairness".

16. 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 (1605) 12 Co. Rep. 114 [*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 at 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, aequum licet dixerit, haud aequum 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 *Bosewell case*[(1605) 6 Co Rep 48-b, 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 open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

17. 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 (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)] (WLR at p. 862) 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 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."
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> (emphasis in original)"

30. The Apex Court in **P.D. Agrawal v. State Bank of India (2006) 8 SCC 776**, however observed that the statement of the law as noticed above in S.L. Kapoor (supra) has undergone a "sea change"and the relevant para reads as follows:

> "**39.** Decision of this Court in *S.L. Kapoor* v. *Jagmohan* [(1980) 4 SCC 379] whereupon Mr. Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in *State Bank of Patiala* v. *S.K. Sharma* [(1996) 3 SCC 364] and *Rajendra Singh* v. *State of M.P.* [(1996) 5 SCC 460] the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of *audi alteram partem*, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula."
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> (emphasis supplied)

31. In **Union of India v. Alok Kumar, (2010) 5 SCC 349**, the Apex Court, after eschewing a hyper-technical approach, held that prejudice must not merely be the apprehension of a litigant, but should be a definite inference of the likelihood of prejudice flowing from the refusal to follow natural justice in following words:-

> "**83.** Earlier, in some of the cases, this Court had taken the view that breach of principles of natural justice was in itself a prejudice and no other "de facto" prejudice needs to be proved. In regard to statutory rules, the prominent view was that the violation of mandatory statutory rules would tantamount to prejudice but where the rule is merely directory the element of de facto prejudice needs to be pleaded and shown. With the development of law, rigidity in these rules is somewhat relaxed. The instance of de facto prejudice has been accepted as an essential feature where there is violation of the non-mandatory rules or violation of natural justice as it is understood in its common parlance. Taking an instance, in a departmental enquiry where the department relies upon a large number of documents majority of which are furnished and an opportunity is granted to the delinquent officer to defend himself except that some copies of formal documents had not been furnished to the delinquent. In that event the onus is upon the employee to show that non-furnishing of these formal documents have resulted in de facto prejudice and he has been put to a disadvantage as a result thereof."

32. In **Dharampal Satyapal Ltd., (supra)**, the Apex Court after noticing the concept of natural justice and its jurisprudential evolution over the years in light of the previous decisions has noticed as under:-

> "**20.** Natural justice is an expression of English Common Law. Natural justice is not a single theory—it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called "*naturalist*" approach to the phrase "*natural justice*" and is related to "*moral naturalism*". Moral naturalism captures the essence of commonsense morality—that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.
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> **21.** In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a

different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (*sic* an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "*natural justice*". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (*i*) rule against bias i.e. *nemo debet esse judex in propria sua causa*; and (*ii*) opportunity of being heard to the party concerned i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "*reasoned order*".

22. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's *Arthasastra*. This Court in *Mohinder Singh Gill* v. *Chief Election Commr.* [(1978) 1 SCC 405 : AIR 1978 SC 851] explained the Indian origin of these principles in the following words: (SCC pp. 432-33, para 43)

> "*43.* Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the hone [**Ed.**: The word "hone" is usually used as a verb, meaning "to sharpen". Rarely, it is also used a noun, as here, meaning "whetstone".] of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed from the legendary days of Adam—and of Kautilya's *Arthasastra*—the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of

legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

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38. ... The principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. ... While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of *procedural fairness*, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing "*would make no difference*"—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an

approach was endorsed by Lord Wilberforce in *Malloch* v. *Aberdeen Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that: (WLR p. 1595 : All ER p. 1294)

"… A breach of procedure … cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."

Relying on these comments, Brandon L.J. opined in *Cinnamond* v. *British Airports Authority* [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that: (WLR p. 593 : All ER p. 377)

"… no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."

In such situations, fair procedures appear to serve no purpose since the "*right*" result can be secured without according such treatment to the individual.

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44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in*ECIL* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] itself in the following words: (SCC p. 758, para 31)

"*31.* Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the

> ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

33. Lately, the **Apex Court in State of U.P. v. Sudhir Kumar and others, 2020 SCC OnLine 847** had the occasion to consider the issue once again and after noticing a large number of authorities and previous decisions, culled out the following principles noted in Para 39, which reads as under:-

> "**39.** An analysis of the aforesaid judgments thus reveals:
> (1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
> (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction *per se* does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
> (3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real

> prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
> (4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.
> (5) The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

34. Applying the principles as extracted above to the facts of the present case, it would indicate that the appellants herein were not heard nor they participated before the Deputy Registrar at the time of passing of the order dated 07.12.2018. The dispute before the Deputy Registrar as well as before the learned Single Judge was primarily between Udai Bhan Misra and Ajit Kumar Jaiswal, Committee of Management. As held by the learned Single Judge that the order passed by the Deputy Registrar was without considering the relevant documents before it and the matter is to be decided afresh after affording opportunity to the parties concerned.

35. In the aforesaid circumstances, the appellants being covered by the phrase "parties concerned" as used by the learned Single Judge have full rights to appear before the said authority and furnish all its documents and evidence in order to establish their membership which shall be considered by the authority concerned. In view of the aforesaid, the Court is of the considered view that no real prejudice has been caused to the appellants and

merely because they have not been heard by the learned Single Judge does not render the order dated 08.10.2021 bad in the eyes of law.

36. Accordingly, this Court does not find any merit in the appeal and it is liable to be dismissed. However, it shall be open for the appellants to appear and participate in the proceedings before the Deputy Registrar, who shall also consider the version of the appellants, if filed and decide it in accordance with law in light of the observations made by the learned Single Judge after affording full opportunity of hearing to the parties.

37. Resultantly, the appeal is dismissed, however, there shall be no order as to costs.

(Jaspreet Singh) **(Rajesh Bindal)**
Judge **Chief Justice**

Lucknow
January 04, 2022
Rakesh Prajapat

Whether the order is speaking : Yes
Whether the order is reportable : Yes