Neutral Citation No. - 2024:AHC:47829-DB

Reserved

AFR

Court No. - 21

Case :- WRIT - C No. - 7022 of 2023

Petitioner :- Executive Committee Maulana Mohamad Ali Jauhar Trust

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Imran Ullah, Mohammad Khalid,Sr. Advocate,Vineet Vikram

Counsel for Respondent :- CSC

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Kshitij Shailendra,J.

1. The Executive Committee of Maulana Mohammad Ali Jauhar Trust through its authorized signatory has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India challenging an Office Memorandum dated 31.01.2023 (for short the 'Office Memorandum') issued by the Additional Chief Secretary, Department of Minority Welfare and Waqf, U.P. Civil Secretariat, Lucknow, withdrawing permission to attach Maulana Mohammad Ali Jauhar Trust (for short 'the Trust') with the Maulana Mohammad Ali Jauhar Technical and Research Institute, Rampur (hereinafter referred to as 'the Research Institute') and grant it on lease to the Trust and further terminating the lease deed dated 04.02.2015 and also the Rectification Deed dated 22.05.2015. A notice dated 15.02.2023 issued by the District Minority Welfare Officer, District Rampur, whereby the Manager of the Trust has been directed to vacate the premises of the Research Institute, has also been challenged. The writ

petition was amended pursuant to an order dated 21.03.2023 and a further challenge was made to a notice dated 06.03.2023 issued by the District Minority Welfare Officer directing the Manager of the Trust to vacate the premises within a period of fifteen days, failing which possession would be taken by the Administration. A writ of mandamus has also been prayed for directing the respondents to remove the seal placed on the gate of the institution with a further prayer that the respondents be directed not to take any coercive measure against the petitioner trust on the strength of impugned order/ Office Memorandum/ notice. An order dated 31.01.2023 issued by the Additional Chief Secretary, Department of Minority Welfare and Waqf, Lucknow, has also been challenged whereby the Divisional Minority Welfare Officer, Moradabad Region, District Moradabad, and the District Minority Welfare Officer, Rampur have been directed to resume possession of the land of the Research Institute and inform the Government about the same.

FRAME OF THE WRIT PETITION

2. The facts of the case, as culled out from the writ petition, are that the petitioner trust is a society registered under the provisions of the Societies Registration Act, 1860, its registration having been granted on 24.04.1995 and renewed from time to time. The primary aims and objectives of the trust, as per the petitioner, is to undertake philanthropic activities for the purposes of fostering scientific temperament among the persons belonging to the minority community and to take steps for their social and educational upliftment as set out in the Memorandum of Association, appended as Annexure No.6 to the writ petition.

3. It is pleaded that, in the year 2005, the then Chief Minister made public announcement for launching different projects for the

welfare of the persons belonging to the minority community and, amongst the same, the Government, in remembrance of the contributions made by Maulana Mohammad Ali Jauhar in the freedom struggle as also in the Khilafat Movement, decided to set up a training and research institute in Rampur. It is pleaded that the primary objective of the research institute was to outline and prepare plans for economic and educational developments of the persons belonging to the minority community and the institution was at liberty to run programmes for effective development of such persons. Accordingly, the Department of Minority Welfare and Waqf, Government of U.P. established a research institute at Village Thothar, District Rampur in the name and style of 'Maulana Mohammad Ali Jauhar Training and Research Institute' (for short 'the Research Institute'), which is spread over a total area of 13140 square meters, out of which constructions in the shape of building existed over 4252.07 square meters and the remaining area, i.e. 8887.93 square meters was in the shape of an open land.

4. It is further pleaded that the State Government, vide Office Memorandum dated 20.11.2014, took a decision to lease out the Research Institute in favour of the petitioner trust under the provisions of the Government Grants Act, 1895, as applicable in the State of U.P. and, in furtherance of the said decision, a lease deed dated 04.02.2015 was executed between the Governor of the State and the petitioner trust and the same was registered on the same day in Book No.1, Volume No.6403, Page No.317 to 328 in the office of Sub-Registrar, Tehsil Sadar, District Rampur. Further pleadings are that the lease was granted for a period of 33 years on receipt of a premium of Rs.1,000/- and at an annual rent of Rs.100/- with an option for renewal of the lease for two further terms of 33 years each, the maximum period of

the lease being 99 years, Though, Clause 2 of the lease deed casts an obligation upon the petitioner trust to ensure that activities are carried out in furtherance of the aims and objectives set out in Schedule-II, inadvertently, the said Schedule and a map exhibiting the boundaries could not be appended to the original lease deed. The State Government, considering the fact that there was a pressing need for qualitative improvement of primary and secondary level education among the minority community, vide Office Memorandum dated 03.03.2015, authorized the petitioner trust to make arrangements in the institution in question for imparting studies in all subjects of primary and secondary level of education, including Urdu, Arabi and Farsi. It is further pleaded that though Clause 9 of the lease deed prohibits raising of any *pucca* constructions on the open land let out to the petitioner trust, certain confusion arose, for removal of which, the State Government, vide an Office Memorandum dated 17.03.2015, approved the amendment in Clause 9 of the lease deed and the words "*pucca* construction" were replaced by words "permanent construction". The case of the petitioner is that in order to cure the aforesaid inadvertent omission of not appending the 'Schedule' and the subsequent decision of the State Government contained in the Office Memorandum dated 03.03.2015 and 17.03.2015, a Rectification Deed was executed between the State Government and the petitioner trust on 22.05.2015 which was also registered in the office of Sub-Registrar concerned and, consistent with the objectives set out in Clause 16 of the Second Schedule of the amended lease deed dated 22.05.2015, the petitioner trust, after obtaining requisite permission, in June, 2015, established a co-education school under the name and style of "Rampur Public School" affiliated to Central Board of Secondary Education (for short C.B.S.E.); the affiliation was extended from time to time and is still valid till 31.03.2026. Certain

details regarding strength of students in the said school have been disclosed in the writ petition and the petitioner's case is that functioning of the institution is without any complaint or any other infirmity.

5. According to the petitioner, on coming of new Government in power in the year 2017, one Shri Baldev Singh Aulakh, a Member of U.P. Legislative Assembly and Minister of State, made certain complaints before the State Government regarding the functioning of the petitioner trust and the Government constituted a Special Investigation Team (for short S.I.T.) by an order dated 23.05.2018, whereafter the Additional Superintendent of Police, S.I.T., vide letter dated 07.01.2019, made certain queries regarding the functioning of Rampur Public School by the petitioner trust. The S.I.T. marked the letter to the petitioner trust and also to the Principal of Rampur Public School raising certain queries and the Principal, vide his letter dated 24.01.2019, provided necessary information as well as the copies of relevant documents, as desired by the Additional Superintendent of Police, S.I.T. It is further pleaded that the S.I.T. submitted some report before the State Government, whereupon, the State Government, on 28.01.2023, took a decision to terminate the lease deed dated 04.02.2015, the rectification deed dated 22.05.2015 and also to revoke the Office Memorandum dated 20.11.2014 whereby previous Government had let out the Research Institute in favour of the petitioner trust. The orders/ notices and Office Memorandum impugned in the writ petition are said to have been issued in furtherance of the decision of the State Government.

6. The impugned action has been challenged mainly on the ground that the entire exercise leading to passing of the impugned orders/ notices/ Office Memorandum has been carried out in complete

derogation of the principles of natural justice; that the Government never issued any show cause notice to the petitioner regarding alleged breaches and defaults on the part of the petitioner; and that the Office Memorandum dated 31.01.2023 does not disclose any reason and, hence, the entire action is liable to be declared illegal and void.

COUNTER AFFIDAVIT

7. A counter affidavit has been filed on behalf of the State-respondents stating that Mohd. Azam Khan, being a Cabinet Minister in the regime of the previous Government (herein after, for short 'the Cabinet Minister/ Hon'ble Minister') holding the porfolio of Minister of Urban Development and Parliamentary Affairs with effect from 28.08.2003 to 13.05.2007 and Minister for Minority Welfare and Waqf, Government of U.P., with effect from 15.03.2012 till 19.03.2017, misused and abused his position to usurp highly valuable State land and the building of the Research Institute built from the State exchequer. The trust was headed by him only, being the founder and lifetime Chairman thereof since before execution of the lease. It is further pleaded that the petitioner trust, instead of advancing the objects of the Research Institute, established a CBSE recognised school in the building of the research institute. The Managing Committee of the said school comprises mainly of the family members of Cabinet Minister. It is further pleaded that Rampur Public School was established over the land and building without approval from the Cabinet or competent authority. Further stand is that Cabinet Minister himself determined and fixed premium of the entire land and building at Rs.1000/- and annual lease rent of Rs.100/- by misusing and abusing his position, causing financial loss to the State exchequer to the extent of around Rs.20.44 crores. In the aforesaid background, the present Cabinet constituted a Special Investigation Team to

enquire and investigate into the entire transaction. The Cabinet found the attachment of the Research Institute with the Trust and also grant of lease of land and building of the Research Institute in favour of the petitioner- Trust to be a result of gross corruption and fraud and the same were set at naught.

8. The facts preceding the execution of lease deed in favour of the petitioner-trust have been disclosed in the counter affidavit as follows:-

(i) The erstwhile Government, ruled by Samajwadi Party, had transferred 1.314 hectares of land of District Jail, Rampur to the Department of Minority Welfare and Waqf, State of U.P., vide Government Order of August, 2004, for establishment of the Training and Research Institute. The objectives of the Research Institute contained in the project report have been reproduced in the counter affidavit. For achieving the objectives of the trust, a building was constructed over the aforesaid land out of Government funds. It is further stated that the then Chief Minister, on his visit to district Rampur, announced that the Research Institute would be attached with Maulana Ali Mohammad Jauhar University, vide Mukhyamantri *Ghoshana* (declaration) on 19.12.2012, however, subsequently, the said *Ghoshana* (declaration) was modified on 07.06.2013 to the effect that the said institute would be attached to the petitioner trust, a private society. It is further stated that the Secretary, Minority Welfare and Waqf Department, on 25.10.2014, reported that the Government building constructed on the land had not been utilized for any purpose, therefore, a proposal had been sent to the office of the then Chief Minister who directed to take appropriate decision at competent level, i.e. the Cabinet on 11.11.2014. The decision of the Cabinet, contained in the resolution dated 20.11.2014, has been reproduced in paragraph

no.19 of the counter affidavit substantially observing that a document of lease would be executed in between the State Government and the Trust, however, in case the Trust fails to achieve the objects of the Research Institute, the right to cancel the lease before its expiry would remain reserved with the State Government. It is further pleaded that though asked, the Department of Finance and Department of Law did not provide any proper or clear opinion regarding the lease rent and its duration, therefore, file was sent for finalization of the said aspects to the office of the then Chief Minister on 19.01.2015 and a direction was issued for taking action at the level of concerned departments as per the Cabinet decision. Various amendments in the documents have been spelt out in the counter affidavit and the stand is that Rampur Public School started running in the Government building constructed for Training and Research Institute on the said land since 02.04.2015, even before amendment in the aims and objectives of the Institute permitting the running of the school and also before execution of the amended lease deed dated 22.05.2015. This became possible in view of enormous power wielded by the Cabinet Minister of the concerned Ministry itself. There was direct conflict of interest between the Minister and the grant of lease and, therefore, all actions are rendered void *ab initio*.

(ii) It is further pleaded that the State Government, by letter dated 23.05.2018, constituted a Special Investigation Team to enquire into the complaints and the Department of Minority Welfare and Waqf also sent a proposal for High Level Inquiry regarding misappropriation of State land and building in the garb of advancing the objectives of the Training and Research Institute, causing huge financial loss to the State Exchequer. Regarding the participation of the trust in the investigation process, the stand is that during the

course of investigation, the S.I.T. recorded statements of Mr. Naseer Ahmad Khan, Member of Legislative Assembly/ Secretary of the Trust, who happens to be a relative of the Cabinet Minister and of Mr. Sultan Khan, Principal, Rampur Public School. The report dated 04.07.2019 submitted by the Executive Engineer of Public Works Department, Rampur regarding construction of a permanent structure over the land in violation of the terms and conditions of the lease deed has also been referred to and the conclusion drawn by the S.I.T. in the report has been reproduced in the counter affidavit apart from recommendations made by the S.I.T. regarding cancellation of the lease deed dated 04.02.2015. It is further stated that the Department of Home took cognizance of the report of S.I.T. on 31.01.2020 and a meeting of High Powered Committee was convened on 16.03.2020, headed by Additional Chief Secretary, Home and attended by Principal Secretary, Minority Secretary Waqf Department, Additional Chief Secretary (Revenue) and Director General of Police. The report was further examined by the said Committee and, after due diligence, the recommendations were validated and accepted in toto. Further pleadings are that pursuant to the impugned action, correction of entries has already been incorporated in the relevant records and regarding opportunity of hearing or participation during the course of investigation, it has been repeatedly stated that during such investigation, oral/ written statements were made by the Principal of Rampur Public School and the Secretary of the Trust and, hence, office bearers of the trust and the institution were fully aware of the ongoing investigation and, therefore, it cannot be said that they were not provided any opportunity in the matter.

REJOINDER AFFIDAVIT

9. Rejoinder affidavit filed on behalf of the petitioners reiterates the stand taken in the writ petition and by referring to various authorities, emphasis is on adherence to the principles of natural justice. The participation of the officials of the trust and Rampur Public School in the investigation has not been denied, however, it has been stated that the same can, in no way, be deemed to be compliance of the principles of natural justice, particularly, when the Principal of Rampur Public School cannot be said to be aware of the managerial affairs of the trust. Every action on the part of the State Government leading to passing of the orders/ notices/ Office Memorandum has been assailed by taking various factual and legal pleas.

INTERVENTION BY THIRD PARTIES

10. In the present case, by an order dated 13.12.2023, an application filed by Rampur Public School and its Principal seeking intervention in the writ proceedings was allowed taking care of the interest of the students who got affected on account of impugned action of the State-respondents. The reasons are recorded in the said order itself. By a subsequent order dated 18.12.2023, while reserving judgment in this case, stand of the State Government contained in affidavit filed on that day was recorded to the effect that out of 1479 students in Rampur Public School in academic session 2022-23, 733 students had been shifted to other branches of Rampur Public School, Rampur; that 161 students of Class XII had passed out and remaining 585 students had taken admission in other schools. Further stand of the Government is that a meeting was held on 15.12.2023 with students and their guardians wherein they did not point out to any specific problem being faced by the students. It is also stated that a

helpline desk has been made operational and the students and parents have been informed about the same.

COUNSEL HEARD

11. We have heard Sri Amit Saxena, learned Senior Counsel, assisted by Mohammad Khalid and Sri Kunal Shah, for the petitioner and Shri Ajay Kumar Mishra, learned Advocate General, assisted by Sri Ajit Singh, learned Additional Advocate General, along with Sri Sudhanshu Srivastava and Sri Ishan Mehta, learned Additional Chief Standing Counsel for the respondents.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Learned Senior Counsel for the petitioner-trust has made the following arguments:-

(i) Neither any show cause notice was issued to the petitioner nor any opportunity of hearing was ever afforded by the respondents to the petitioner before passing the impugned order dated 31.01.2023, whereby the decision dated 20.11.2014 to grant lease, office memorandum, lease deed and correction lease deed, were revoked or set aside.

(ii) The impugned order dated 31.01.2023 does not contain any reason, therefore, the said order as well as all consequential orders/notices are wholly invalid.

(iii) The impugned order suffers from breach of principles of natural justice and, therefore, all the impugned orders and the notices deserve to be quashed.

(iv) No material or document on the basis of which the decision dated 20.11.2014 has been withdrawn or the lease deed has been cancelled, had been supplied to the petitioner.

(v) The impugned order has not been passed on merit and no ground of cancellation emerges therefrom.

(vi) Impugned order cannot be supplemented by fresh reasons assigned in counter affidavit, particularly when neither any show cause notice was issued nor was the petitioner confronted with any material nor any opportunity of hearing was afforded before passing the impugned order.

(vii) The allegations of fraud, conflict of interest or violation of Rules have been pleaded for the first time in the counter affidavit and the petitioner was never put to notice on the said grounds which might have been reasons behind taking the action impugned.

(viii) S.I.T. sent letter dated 07.01.2019 to the District Magistrate, Rampur, a copy whereof was marked to the Principal of the School as well as Manager of the Trust and seven queries raised through said letter were confined to running of the school by the Research Institute; recognition granted to the school inside the premises of the Research Institute; since when the school was being run; which subjects and languages were being taught; what was the number of officers and employees in the management of the school; which classes were being run therefrom and as to whether, apart from running the school, any research activity was also being carried out; if yes, what is the number of the research scholars. Certain documents were also called from the petitioner and the petitioner responded to the communication so made and answered all the seven points in the following manner:-

> "1– यह मोलाना मोहम्मद अली जौहर ट्रस्ट को उत्तर प्रदेश सरकार द्वारा लीज पर दिया गया है।
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> 2– सी.बी.एस.ई. बोर्ड नई दिल्ली द्वारा पंजीकृत प्रमाण पत्र प्रतिलिपि।
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> 3– (क) अनापत्ति प्रमाण पत्र आयुक्त द्वारा प्रदान किया गया।

(ख) अनापत्ति प्रमाण पत्र नगर पालिका द्वारा प्रदान किया गया।

(ग) अग्नि एवं सुरक्षा प्रमाण पत्र मुख्य अग्नि शमन अधिकारी द्वारा प्रदान किया गया।

<u>प्रमाणित प्रतिलिपियाँ संलग्न</u>

4– 2015 से हिन्दी अंग्रेजी उर्दू संस्कृत भाषायें एवं सी.बी.एस.ई पाठयक्रम के अनुसार सारे विषय।

5– प्रधानाचार्य, अध्यापक, लेखाकार, चपरासी, एवम सफाई कर्मी ग्रेड मिलाकर कुल 40.

6– कक्षा 1 से 11 तक 857 विद्यार्थी।

7– मौलाना मोहम्मद अली जौहर पर शोधकर्ता एवम उनकी जीवनी और शैली के बारे में जानने वाले बहुत से आचार्य व शोधकर्ता समय समय आते रहते हैं। और संस्थान की लाइब्रेरी मे मौजूद मोलाना मोहम्मद अली जौहर पर साहित्य का उपयोग करते है। एवम समय समय पर मौलाना मोहम्मद अली जौहर पर सेमिनार भी प्रस्तुत किये जाते हैं।"

(ix) The purpose behind the establishment of Research Institute was never frustrated as the Minority Welfare and Waqf Department of the State Government, vide Office Memorandum dated 03.03.2015, itself permitted substitution of the objects mentioned in the detailed project report/ Chief Minister Declaration, at point no.16 thereof, in the following manner:-

3. तदनुसार श्री राज्यपाल महोदय मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान, रामपुर के लिए निर्धारित किये गये उद्देश्यों के बिन्दु सं०–16 पर अंकित उद्देश्य जो ऊपर प्रस्तर–1 पर अंकित है के स्थान पर निम्नलिखित उद्देश्य प्रतिस्थापित करने की सहर्ष अनुमति प्रदान करते हैः–

"वर्तमान में उर्दू, अरबी तथा फारसी भाषा में गुणात्मक सुधार, शोध कार्य, नियोजन तथा ज्ञानवर्धन अत्यन्त सीमित हो गया है साथ ही अल्पसंख्यकों में प्राथमिक व माध्यमिक शिक्षा में भी गुणात्मक सुधार की आवश्यकता है। अतः इस बिन्दु को दृष्टिगत रखते हुए संस्थान में प्राथमिक व माध्यमिक शिक्षा के समस्त विषयों के साथ –साथ उर्दू अथवा अरबी व फारसी विषयों में शिक्षा की व्यवस्था करना एवं शोध कार्य कराना।

4. मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान, रामपुर के लिए निर्धारित किये गये शेष उद्देश्य यथावत् रहेगें।"

(x) Such decision of the State Government was implemented and Schedule II was attached by executing a supplementary lease deed on 22.05.2015. The S.I.T. report itself indicates that the State Government had transferred the land to the Research Institute in

August, 2004 and since the Government was not able to accomplish the objects set out behind establishment of Research Institute, the petitioner-trust, which is a society registered under the Societies Registration Act, 1860, since 1995, took over the building pursuant to resolutions passed and decision taken by the Government, as noted in the counter affidavit itself.

CASE LAW CITED ON BEHALF OF THE PETITIONER

13. Learned senior counsel for the petitioner, in support of his submissions, has placed reliance upon the following authorities:-

(i) Deepak Ananda Patil Vs. State of Maharashtra and others[1];

(ii) Dipak Babaria Vs. State of Gujarat & others[2];

(iii) UMC Technologies Private Limited Vs. Food Corporation of India and another[3];

(iv) Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others[4];

(v) 63 Moons Technologies Limited (Formerly Known as Financial Technologies India Limited) and others Vs. Union of India and others[5];

(vi) Kaushal Kishore Vs. State of U.P.[6];

(vii) Mohinder Singh Gill Vs. Chief Election Commissioner[7];

(viii) Sachidanand Pandey Vs. State of West Bengal[8];

(ix) Re Natural Resources Allocation[9];

(x) Electrosteel Castings Ltd. Vs. U.V. Asset Reconstruction Company Ltd[10].

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1 2023 SCC Online SC 34
2 AIR 2014 SC 1792
3 (2021) 2 SCC 551
4 AIR 2003 SC 2120
5 (2019) 18 SCC 401
6 (2023) 4 SCC 1
7 (1978) 2 SCC 405
8 (1987) 2 SCC 295
9 (2012) 10 SCC 1
10 (2022) 2 SCC 573

SUBMISSIONS ON BEHALF OF THE STATE-RESPONDENTS

14. On the other hand, learned Advocate General, assisted by State Counsel, has structured his arguments mainly under the following heads:-

(i) Mohammad Azam Khan was the Cabinet Minister during the period entire exercise for grant of lease took place. He used his power and influence in securing long term lease of 99 years of valuable State land & building, built from State fund, for his own Trust. He played the role of granter and was also the beneficiary. This was a direct conflict of interest and it renders the entire exercise void *ab initio*.

(ii) The petitioner has approached the Hon'ble Court with unclean hands by concealing material facts, deserving dismissal of the petition on this count alone, as justice and fraud cannot dwell together and fraud vitiates even a solemn act.

(iii) Alleged breach of principles of natural justice would be of no significance, as setting aside of the impugned action on this ground would revive and restore the illegal grant and orders, disentitling the petitioner to any discretionary relief.

(iv) There is flagrant violation of provisions of U.P. Revenue Manual regarding grant of lease and fixation of rent etc.

(v) Creation of temporary posts for running Research Institute and then abolishing them for the purpose of establishing a school instead of Research Institute, was a ploy.

15. Elaborating the arguments on the above noted points, it has been contended that the Cabinet Minister was holding the portfolio of Ministery of Urban Development, and Parliamentary Affairs (w.e.f. 28.08.2003 till 13.05.2007) and Minister for Minority Welfare and

Waqf (w.e.f. 15.03.2012 to 19.03.2017). Under a pre-meditated design, he, by abusing his position and power as a Cabinet Minister, succeeded in usurping highly valuable State land & building, for his own private Trust in the garb of reviving and advancing the objectives of the Research Institute. However, that was never the intention and, therefore, no effort was ever made in that direction. Rather, the Government building and land was utilized for establishing "Rampur Public School" by private Committee of Management, controlled by his family members. The abuse of public office held by him was to such extent that he himself determined & fixed premium of the demised land and building worth 20.44 crores as Rs.1000/- only & annual lease rent as Rs.100/-. This was in complete defiance of the Cabinet decision dated 20.11.2014 that duration of lease and lease rent would be determined/fixed separately as per relevant rules. The relevant extract of Office Memorandum dated 20.11.2014 as well as Cabinet resolution dated 20.11.2014 is as below:-

> (5) मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान, रामपुर की भूमि एवं भवन का मूल्य जो प्रचलित नियमों के अन्तर्गत निर्धारित होगा, के सापेक्ष निर्धारित धनराशि का नियमानुसार सांकेतिक मूल्य/राशि राज्य सरकार को दिये जाने के संबंध में उभय पक्षों के मध्य अनुबन्ध कर निष्पादित किया जायेगा।
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> (6) मोहम्मद अली जौहर ट्रस्ट से सम्बद्ध की जा रही/लीज पर दी जा रही मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान, रामपुर की भूमि एवं भवन की लीज की अवधि एवं लीज रेन्ट का निर्धारण पृथक से नियमानुसार किया जायेगा।

(emphasis supplied)

16. It has further been argued that no advertisement inviting applications from public at large for settlement of lease and management of the Research Institute was ever published. The Cabinet Minister of the concerned department, in a completely surreptitious manner, succeeded in getting the lease and management

rights of the Research Institute settled in favour of his family Trust. The long period of lease of 99 years and the one-sided terms of lease were tailor made to ensure conferment of rights of permanent nature in favour of his family trust.

17. It is contended that in the entire writ petition, it has not been disclosed anywhere that Mohd. Azam Khan was the Cabinet Minister at the time when the entire exercise of execution of lease and conferment of management rights in the Training Institute, in favour of the petitioner-Trust took place. It is also not disclosed that he himself was the beneficiary of the allotment made and that the petitioner has also suppressed information regarding the proceedings undertaken by S.I.T. though the petitioner was well aware of the same. The argument is that the deliberate act of concealment of material facts has rendered the petition liable to dismissal solely on the ground of suppression of material facts as it is an act of abuse of the process of the Court. Reference to Chapter XIX of U.P. Revenue Manual, particularly Clauses 361, 366 and 368, has been made regarding procedure to be followed while fixing lease rent and duration thereof. It is contended that in cases involving concession in favour of the lessee regarding lease rent or premium, the matter has to be submitted before the State Government, which procedure has not at all been followed in the present case. Moreover, fixation of period of lease as 99 years was also without any approval of the Cabinet. It is further argued that posts created to be filled up by Government Officers for achieving the objectives of the Research & Training Institute, vide Government Order dated 1st August 2006, were directed to be abolished under pressure of the Cabinet Minister. Breach of terms and conditions contained in the lease deed dated 04.02.2015 has been elaborately argued stating that Research Institute

never came into existence according to the terms of the lease, no permission to open & run "Rampur Public School" was obtained and the aim was profiteering & amassing wealth by misusing Government Land & Building meant for Government Research Institute. It has further been argued that no fair and transparent procedure was ever followed for allotment/leasing of the land/building in question and the petitioner has not brought on record any pleading or document to demonstrate that any legally recognized procedure was ever followed prior to the allotment of the land in question. The property in question belongs to State Government and is a public property. Hence, it was the Cabinet Minister's public duty to ensure that the property was allotted in favour of eligible person by following the procedure laid down by the State Government. However, he misused his power to procure lease for his family trust, at a throw-away price.

CASE LAW CITED ON BEHALF OF THE RESPONDENTS

18. Learned counsel for the respondents has placed reliance upon the following authorities:-

(i) Secretary, Jaipur Development Authority Vs. Daulat Mal Jain[11];

(ii) State (NCT of Delhi) Vs. Union of India[12];

(iii) Common Cause Vs. Union of India[13];

(iv) Institute of Law, Chandigarh Vs. Neeraj Sharma[14];

(v) Ram & Shyam Co. Vs. State of Haryana[15];

(vi) Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh[16];

11 (1997) 1 SCC 35
12 (2023) 9 SCC 1
13 (1999) 6 SCC 667
14 (2015) 1 SCC 720
15 (1985) 3 SCC 267
16 (2019) 14 SCC 449

(vii) K.D. Sharma Vs. Sail[17];

(viii) Satyan Vs. Deputy Commissioner and others[18];

(ix) State of U.P. Vs. Sudhir Kumar Singh[19];

(x) Bishambhar Prasad Arfat Petrochemicals[20];

(xi) Gadde Venkateswara Rao Vs. Govt. of A.P.[21];

(xii) M.C. Mehta Vs. Union of India[22]; and

(xiii) 63 Moons Technologies Ltd. (Formerly Known as Financial Technologies India Limited) and othersVs. Union of India[23].

THE ISSUES

19. From perusal of pleadings of the parties, documents annexed to various affidavits as well as the record produced before this Court and after hearing learned counsel for parties at length, following broad issues emerge for consideration of this Court and discussion on the same would cover all the contentions raised by the respective parties:-

(i) Whether the initial grant made by the previous Government in favour of the Petitioner-Trust was void *ab initio*?

(ii) Whether there was violation of principles of natural justice as would render the impugned decision(s) of the present State Government a nullity ?

(iii) Whether discretionary and equitable jurisdiction of High Court under Article 226 of the Constitution of India should be exercised in the facts and circumstances of the instant case ?

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17 (2008) 12 SCC 481
18 (2020) 14 SCC 210
19 2020 SCC Online 847
20 2023 SCC Online 458
21 (1966) 2 SCR 172
22 (1999) 6 SCC 237
23 (2019) 18 SCC 401

PRODUCTION AND PERUSAL OF THE ORIGINAL RECORD

20. During the course of arguments, the original record was produced before the Court on 08.12.2023. By the order dated 08.12.2023, we permitted Sri Amit Saxena, learned Senior Counsel for the petitioner, along with his assisting counsel, to peruse the record and take notes, if needed. Learned counsel for both sides were given full opportunity to refer to the original record during the course of hearing. With the assistance of learned counsel for both the sides, the Court noted certain aspects from the original record, which will be referred to while analysing the arguments.

ANALYSIS

Issue No.1

21. The fundamental question is whether the initial grant made by the previous Government in favour of the Petitioner-Trust was void *ab initio*. It would be advantageous to first advert to certain proceedings from the original record and the counter affidavit.

22. The State Government decided to establish a Training and Research Institute at Rampur to provide fillip to Urdu, Arabi and Farsi languages. For achieving the said objective, it transferred 1.314 hectare of land of District Jail, Rampur to Department of Minority Welfare and Waqf, State of U.P. vide G.O. No. U.O.-53/22-4-2-2004 August 2004 for establishment of Training and Research Institute in the name of Maulana Mohd. Ali Jauhar Training and Research Institute, Rampur. A detailed project report was got prepared setting out the objectives of the Research Institute. The building of the Research Institute was got constructed on the said land in pursuance of G.O. No. 1690/52-2-2005-2(47)/2005, dated 24.10.2005. The Construction and Design Services, U.P. Jal Nigam was given the task

of constructing the building of the Research Institute at an estimated cost of Rs. 9.44 crores. Eighty percent of the work was duly completed by the Construction Agency. On 1.8.2006, a G.O. was issued creating 21 temporary posts for the Research Institute. The post of Director of the Research Institute was conceived to be equivalent to the post of Professor and was to be filled up by transfer/deputation by the Department of Minority Welfare and Waqf, Government of U.P. Rest of the 20 temporary posts were to be filled up from Provincial Civil Services, Economic Statics Wing of the Department of Planning by deputation/transfer, till Service Conditions were laid down and regular appointments were made. Abruptly, on 10.12.2012, the then Chief Minister announced in a public meeting that the Research Institute would be attached to Maulana Mohd. Ali Jauhar University. The decision was communicated vide Mukhya Mantri Ghoshna dated 9.12.2012. The original record reveals that on 30.1.2013, the Section Officer of Minority Welfare and Waqf Department sent a request to the Deputy Secretary of the State for creation/sanction of 21 posts in the Research Institute. Just below the aforesaid noting is a noting dated 13.02.2013 made by Cabinet Minister (Minister of Urban Development, Parliamentary Affairs, Minority Welfare and Waqf), to the following effect:-

"मा० मंत्री जी

(क.) इस सम्बन्ध में विदित रहे कि उक्त मौलाना मोहम्मद अली जौहर शोध संस्थान के बारे में मा० मुख्य मन्त्री जी द्वारा मौहम्मद अली जौहर ट्रस्ट को मोहम्मद अली जौहर विश्वविद्यालय से सम्बद्ध करने की घोषणा रामपुर से की गयी है। तथा आवश्यक है कि दोनो बिन्दुओं पर एक साथ निर्णय लेना चाहें।

ह० मो० आजम"

(मो० आजम खाँ)

मंत्री

संसदीय कार्य, मुस्लिम वक्फ, नगर विकास,

जल सम्पूर्ति, नगरीय रोजगार एवं गरीबी उन्मूलन,
अल्पसंख्यक कल्याण एवं हज,
उत्तर प्रदेश शासन।

23. It is apparent from the aforesaid noting, written and signed by the Cabinet Minister himself that he wanted the attachment of Research Institute with Mohammad Ali Jauhar University and, hence, requested for decision being taken in this regard along with decision for creation of posts.

24. At this stage, it would be interesting to note how the said University, i.e. Mohammad Ali Jauhar University was established and who controls it. It is a creature of Mohammad Ali Jauhar University Act, 2005 (U.P. Act No.19 of 2006) passed by the U.P. Legislature during the period Mohd. Azam Khan was a Cabinet Minister holding the portfolio of Minister of Urban Development and Parliamentary Affairs. The Statement of Objects and Reasons behind such enactment reads as follows:-

> "**Prefatory Note- Statement of Objects and Reasons**.- Urdu language is spoken as mother tongue by a particular section of the society of Uttar Pradesh. The Urdu language is required to be developed in such a way that any person of the society may continue their study to the higher stage of learning in Urdu literature including Arabi and Farasi languages. There is no University under the control of State wherein higher study or Urdu, Arabi and Farasi language and research therein could be facilitated to the persons who are interested in Urdu, Arabi or Farasi language. The Maulana Mohammad Ali Jauhar Trust, Lucknow has sponsored for the establishment of such University. It has, therefore, been decided to establish a University sponsored by the said Trust to be known as Mohd. Ali Jauhar University at Rampur in the State of Uttar Pradesh to provide advance knowledge and wisdom and understanding by teaching and research in Urdu, Arab and Farasi languages to the scholar.
>
> The Mohd. Ali Jauhar University Bill, 2005 is introduced accordingly."

(emphasis supplied)

25. It is apparent from the Statement of Objects and Reasons that the petitioner-Trust was a sponsor for establishment of the University at Rampur. The Act defines "Trust" under Section 2(r), as follows:-

> "2(r) "Trust" means Maulana Mohammad Ali Jauhar Trust, Lucknow, Uttar Pradesh registered under the Societies Registration Act, 1860."

(emphasis supplied)

26. Section 10 of the Act describes Officers of the University, namely, the Chancellor; the Vice-Chancellor; the Pro-Vice-Chancellor; Directors/ Head of the Institutions; the Registrar; the Treasurer; the Deans of Faculties; the Dean of Students' Welfare; the Proctor; the Finance Officer; and such other Officers as may be declared by the Statutes to be officers of the University. Interestingly, the Chancellor and Vice-Chancellor of the University have been defined under Sections 11 and 12 of the Act, as follows:-

> "**11. The Chancellor.-** (1) The Chairman of the Maulana Mohammad Ali Jauhar Trust (Registered) shall be the Chancellor of the University till such time as determined from time to time by the Trust.
>
> (2) The Chancellor shall, by virtue of his office, be the Head of the University.
>
> (3) The Chancellor shall, if present, preside at the Convocation of the University held for conferring degrees.
>
> (4) Other powers and functions of the Chancellor shall be such as may be prescribed.
>
> **12. Vice-Chancellor.-** (1) The Vice-Chancellor shall be appointed by the Chancellor with the prior approval of the Trust for such period as may be prescribed.
>
> ....."

(emphasis supplied)

27. It is very much clear that the Chairman of the petitioner-Trust shall be the Chancellor of the University and, by virtue of his office, he shall be the Head of the University and he himself is the

Appointing Authority of the Vice-Chancellor. There is no dispute about the fact that the Cabinet Minister is the Lifetime Chairman of the petitioner-Trust and, therefore, the University, though established under a State Legislation was/is under his full control and command.

28. Further proceedings on record demonstrate that, time and again, different departments of the Government forwarded the file from one office to other seeking opinion with respect to affiliation/ attachment of the Research Institute with Jauhar University. Sri Surya Prakash Singh Sengar, Deputy Secretary of Higher Education, Government of U.P., on 31.05.2013, clearly opined that there was no provision for attachment of an institution established by Government with a private University established under Maulana Mohammad Ali Jauhar University Act, 2005 and, accordingly, the file was directed to be returned to the Minority Welfare and Muslim Wakf Department for requisite approval to the said decision. The matter did not rest there and the file was again moved from one office to other emphasizing the need on the attachment/ affiliation of the Research Institute with the University. Ultimately, the matter was referred for opinion of the Advocate General on 22.01.2014, however, noticing that there was no law under which the Research Institute could be attached with/ affiliated to a private University, merely to fulfill the declaration (*ghoshana*) made by the Chief Minister.

29. A very interesting feature of the decision to obtain opinion from the Advocate General stands reflected from record, that is to the effect that the declaration made by the Chief Minister with respect to attaching/ affiliating the Research Institute with Jauhar University was substituted by an “amended declaration” to attach the Research Institute with Mohammad Ali Jauhar Trust (petitioner-Trust) and the officials of the State Government clearly recorded in the reference

proceedings dated 22.01.2014 that there was no law or even instance under which any Government institution had ever been attached to a private institution/ trust. Then, the Advocate General submitted his opinion dated 24.05.2014 stating that there appears to be no legal impediment in attachment/ leasing out of Research Institute with/to the petitioner trust with a further opinion that the said attachment/ leasing out would be in public interest as it would help in achieving the common objectives of these organisations and to create supplementary resources for assisting the State Government in providing quality higher education, mainly in the field of Urdu language. As such, in fact, the Advocate General approved the decision to lease out the property of the Research Institute in alleged public interest. Even after such opinion, there was difference of opinion amongst Government Officials and the file was again placed before the Advocate General who furnished second legal opinion on 21.06.2014 stating that previously furnished opinion was clear and unambiguous and he expected the administrative department to act in accordance with the opinion already given.

30. The next proceeding on record, drawn on 24.06.2014, is of great relevance. It takes note of '<u>conflict of interest</u>' in case the lease is granted to the petitioner-Trust. Sri Dharm Raj Singh, Deputy Secretary of the Minority Welfare Department of U.P. Government, observed that various policy, procedural and financial complications would arise in the event of attachment of the Research Institute with the petitioner-trust and, therefore, suggested for obtaining opinion of the Revenue and Law Department. Reference to certain decisions of Hon'ble Supreme Court was also made in the noting dated 24.06.2014 stating that the land and the building concerned, being the property of Minority and Welfare Department and, at the relevant time, Mohd.

Azam Khan, being the Cabinet Minister of the same Department as well as the person taking all important decisions in the matter relating to transfer of land/ building to the trust, there would be 'conflict of interest'. It would give rise to various complaints and legal complications. It was also observed that in past also, not only such allotments had been cancelled but departmental proceedings were also launched against the officials during whose regime such decisions were taken. Ultimately, the matter was referred to the Revenue and Legal Department formulating following four points for further consideration:-

(i) Policy aspect;

(ii) Procedural aspect;

(iii) Financial aspect; and

(iv) Conflict of interest aspect

31. Each of the aforesaid aspects carries considerable importance in the present case. We first refer to the financial aspect about which the concerned ministry was of the clear opinion that the market value of the land over which the Research Institute exists, was Rs.5.51 crores and the structure worth Rs.9.44 crores exists over it. Therefore, the value of the property being approximately Rs.15 crores, it would require payment of Rs.20.44 crores in the event of grant of lease and as to whether the trust is agreeable to the same, is not clear.

32. As far as conflict of interest is concerned, following noting needs reference:-

> (4) Conflict of interest सम्बन्धित पहलू – उल्लेखनीय है कि प्रश्नगत शोध संस्थान की भूमि एवं भवन अल्पसंख्यक कल्याण विभाग की सम्पत्ति है। वर्तमान मे मो० आजम खां जी अल्पसंख्यक कल्याण विभाग के मा० मंत्री है। प्रश्नगत जौहर ट्रस्ट जिसे संस्थान को लीज/सम्बद्धता पर देने का प्रकरण विचाराधीन है, में भी मा० मंत्री जी स्वयं

तथा उनके परिवार के सदस्य मुख्य पदाधिकारी हैं। इस प्रकार प्रकरण में मा० मंत्री जी लाभ के पक्षकार भी हैं तथा निर्णय लेने हेतु महत्वपूर्ण प्राधिकारी भी है। इस प्रकार अल्पसंख्यक कल्याण विभाग द्वारा ही ट्रस्ट को भूमि/भवन का स्वामित्व स्थानान्तरित करने की प्रक्रिया सम्भवतः कनफ्लिक्ट आफ इन्ट्रेस्ट Conflict of interest से बाधित हो सकती है, जो कि बाद में विभिन्न शिकायतों व कानूनी पेचीदगियों में फंस सकती है।

6– उल्लेखनीय है कि इस प्रकार के प्रकरण पूर्व में शासन के राजस्व विभाग में व्यवहृत हुए हैं जिसमें शासन द्वारा इस प्रकार भूमि आवंटन को विपरीत प्रकार से लेते हुए आवंटन निरस्त ही नही किया बल्कि सम्बन्धित अधिकारियों के विरुद्ध भी कार्यवाही हुई थी। अतः यह परीक्षण आवश्यक है कि पूर्व में इस प्रकार के प्रकरण में आवंटन निरस्त करने हेतु जो भी विधिक परामर्श दिया गया होगा उसका प्रभाव इस प्रकरण पर तो नहीं पड़ेगा।?

उपरोक्त बिन्दुओ पर विचार करते हुए ही इस पर निर्णय लेना उचित होगा। महोदय यदि सहमत हों तो इस पर राजस्व विभाग तथा न्याय विभाग का परामर्श प्राप्त कर अग्रिम कार्यवाही की जाय।

(emphasis supplied)

33. It is interesting to note that Sri Shri Prakash Singh, Secretary of the Department, retired on 31.07.2014. However, he was granted extension of service. Soon thereafter, he puts up a note dated 13.10.2014 recording that there was no justification for seeking opinion from the Revenue and Legal Departments as Advocate General had twice given his opinion in favour of the attachment/ lease. The explanation given by him for making such recommendation was that by creation of lease, title in land and building would not get transferred in favour of the petitioner-Trust but would remain with the State Government. Therefore, there was no question of 'conflict of interest' as in case the trust fails to achieve the objects set out, the State Government would have full right to cancel the lease before expiry of term and take possession of the property.

34. Therefore, the matter that began with the concept and vision of establishment of Research Institute, moved to the attempt of the State Government to attach the same with Jauhar University and,

when it failed, shifted to settlement of lease hold rights in the land and building of the Research Institute in favour of the petitioner-trust. What happened later on, would stand reflected from further proceedings, described herein below.

35. It is apt to refer to the proceedings dated 17.10.2014 drawn by the Joint Secretary of the Minority Welfare and Waqf Department. In para 10 thereof, need to lease out property of the Research Institute to the petitioner-trust and to obtain an opinion from the Legal Department was felt. On 25.10.2014, the Secretary, Minority Welfare and Muslim Waqf, U.P. Government granted approval for placing the matter relating to leasing out of the Research Institute in favour of the petitioner-trust before the Chief Minister for approval and, thereafter, by the Cabinet. The said proposal of the Secretary, Minority Welfare and Muslim Waqf, U.P. Government was approved by the Chief Secretary on 14.11.2014. Thereafter, the record reveals that a note was prepared containing opinion of different departments for being placed before the Cabinet in relation to proposal for leasing out the Research Institute in favour of the petitioner-trust. The note which was to be put up before the Cabinet was approved by the Cabinet Minister himself, in his capacity as Minister, Parliamentary Affairs, Muslim Waqf, Urban Development, Water Supply, Urban Employment and Haj. The Finance Department, then, on 19.11.2014, proposed that in case of attachment of the Research Institute with the Trust, the posts initially created for the Research Institute, would be of no use (*anupyogi*) and be abolished and period of lease as well as lease rent be determined in accordance with law.

36. At page 106 of the original record, it is noted that the proposal for leasing out the Research Institute in favour of the petitioner-trust was placed before the Cabinet on 20.11.2014, vide

item No.2 and it was approved by the Cabinet. The note also mentions that in accordance with the comments of the administrative wing contained at paragraph no.13, an office memorandum has been prepared and that the note be put up for approval by the concerned Secretary. On the same date, on 20.11.2014, it was approved by the Joint Secretary, Minority Welfare and Waqf Department, U.P. Government. Also, on the same date, an office memorandum dated 20.11.2014 (Annexure-3 to the counter affidavit) was issued relating to grant of lease of the Research Institute in favour of the petitioner-trust, subject to the condition, inter alia, that the lease would become effective from the date of execution of the lease dead; the petitioner-trust would use the land and building of the Research Institute for advancing the objectives of the Research Institute, failing which the Government shall have right to determine the lease; the decision relating to fixation of lease rent would be taken subsequently having regard to the prevalent rules; 21 posts created at the time of establishment of the Research Institute being of no use, would stand abolished; and that period of lease and lease rent would be determined as per Rules (लीज़ की अवधि एवं रेन्ट निर्धारण नियमानुसार कराया जायेगा).

37. It is evident from the above, that within a short span of just one week, all objections were overruled and the matter was put up before the Cabinet and its consent obtained. Sri Shri Prakash Singh, the Secretary of the Department, who was granted extension, played the prime role to see that the entire transaction materialises as per the desire of the Cabinet Minister.

38. Then, on 08.12.2014, a decision was proposed in respect of following four points:-

(i) What should be the period of lease granted to the Trust;

(ii) Considering the value of the property being Rs.20.44 crores, what would be token money required to be deposited;

(iii) The amount of annual lease rent; and

(iv) Period of renewal of lease with percentage of increment in the lease rent.

39. On the same date, on 08.12.2014, an office note was got put up by Shri Rakesh Kumar Mishra, Special Secretary to the effect that the opinion of Revenue and Finance Departments would not be required as the same had already been obtained while putting the matter before the Cabinet. It also mentions that Rs.100/- be proposed as annual lease rent and a notional premium be also proposed. The said note was put on the very next date, i.e. on 09.12.2014, before the same Special Secretary, namely, Shri Rakesh Kumar Mishra mentioning the necessity of obtaining opinion from the Revenue and Finance Departments in respect of four points enlisted above and he approved the same, overlooking his own note dated 08.12.2014. In pursuance thereof, an office note was prepared proposing a notional premium of Rs.1,000/- only for creation of lease in favour of the petitioner-trust for property worth Rs.20.44 crores and lease rent of Rs.100/- per annum apart from other conditions of lease finalized earlier. The proposal for fixation of premium of Rs.1,000/- for property value of Rs.20.44 crores, as per the said note, came into existence for the first time vide the aforesaid note. It was approved by the Deputy Secretary and the same Special Secretary Sri Rakesh Kumar Mishra on the same day and, thereafter, the matter was sent to Finance and Law Departments.

40. At page 114-115 of the record, there is a note/report prepared by Special Officer-II, Law Department, U.P. Government to

the effect that pursuant to previous proceedings, an office memorandum dated 20.11.2014 was issued and that copy of registration certificate of the petitioner-trust, memorandum of association, bye-laws and project report concerning the Research Institute have been made available. The note/ report further mentions that uptil then, approval from the Finance Department qua lease deed had not been obtained and name of the petitioner-trust in the office memorandum dated 20.11.2014 was not as per the registration certificate. The Special Secretary opined that before executing the lease deed, the name of the petitioner-trust be amended, Schedules II and III be attached along with lease deed, approval be obtained from the Finance Department, blanks in the deed be filled up and, lastly, the vetting fees be deposited.

41. Then comes in light very important proceedings in the matter. Sri Jai Prakash Pandey, Joint Secretary of Minority Welfare Department drew those proceedings on 26.12.2014 to the following effect:-

> "कृपया गतपृष्ठ पर राजस्व विभाग की टिप्पणी का अवलोकन करें। इस पत्रावली में मौलाना मोहम्मद अली जौहर शोध संस्थान को मौलाना मोहम्मद अली जौहर विश्वविद्यालय से सम्बद्ध/लीज पर दिये जाने का प्रकरण विचाराधीन है। प्रश्नगत प्रकरण मा० मंत्रि–परिषद के समक्ष दिनांक 20.11.2014 को प्रस्तुत किया गया था और अनुमोदन प्राप्त होने पर कार्यालय ज्ञाप दिनांक 20.11.2014 निर्गत किया गया।
>
> 2– मा० मंत्रि–परिषद द्वारा लिये गये निर्णय के अनुपालन में मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान को मौलाना मोहम्मद अली जौहर ट्रस्ट के साथ सम्बद्ध/लीज पर दिये जाने हेतु पट्टा विलेख का आलेख तैयार किया गया और उस पर न्याय विभाग एवं वित्त विभाग की सहमति प्राप्त करने हेतु पत्रावली संदर्भित की गयी। न्याय विभाग द्वारा पृष्ठ – 114–118 पर अपनी सहमति व्यक्त करते हुये पट्टा विधीक्षण से पूर्व आलेख्य पर कतिपय संशोधन/कार्यवाही कराने की अपेक्षा की गयी। वित्त विभाग का परामर्श पृष्ठ–119 से 123 पर प्राप्त हुआ। वित्त विभाग द्वारा अपनी सहमति व्यक्त करते हुये यह भी परामर्श दिया गया कि प्रशासनिक विभाग लीज रेण्ट/ लीज की अवधि के निर्धारण पर राजस्व विभाग का सहमति/ अनापत्ति प्राप्त कर लेंगे।
>
> 3– राजस्व विभाग का परामर्श पृष्ठ–126 पर प्राप्त हुआ, जिस पर उन्होंने पृष्ठ–92 के प्रस्तर–4 में अंकित परामर्श के अनुसार अनापत्ति देते हुये पत्रावली वापस की गयी।

उल्लेखनीय है कि प्रश्नगत प्रकरण में 02 मुख्य बिन्दु विचाराधीन है। प्रथम यह कि मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान, रामपुर की भूमि एवं भवन का प्रचलित नियमों के अनुसार मूल्य लगभग 20.44 करोड़ निर्धारित होता है, जिसके सापेक्ष सांकेतिक धनराशि के रूप में कितना रूपया ट्रस्ट से जमा कराया जाय और लीज रेण्ट क्या रखा जाय। इस लीज की अवधि कितने वर्ष की रखी जाय।

4– इस संबंध में पृष्ठ–110 पर सचिव महोदय के आदेश के उपरान्त विभाग द्वारा पृष्ठ–111 से 113 पर टिप्पणी अंकित की गयी है, जिसमें पट्टा विलेख में निर्धारित अन्य शर्तों के साथ सांकेतिक मूल्य रू० 1000/– (रूपये एक हजार मात्र) एवं लीज रेण्ट रू० 100/– (रूपये एक सौ मात्र) वार्षिक एवं प्रत्येक नवीनीकरण के समय 10 प्रतिशत लीज रेण्ट में वृद्धि करने का प्रस्ताव किया गया। लीज की अवधि 99 वर्ष अर्थात 33 वर्ष एवं 33–33 वर्ष के 02 नवीनीकरण सहित रखने का प्रस्ताव भी किया गया। उक्त प्रस्ताव के उपरान्त न्याय विभाग, वित्त विभाग एवं राजस्व विभाग की सहमति/परामर्श प्राप्त किया गया, जो प्रस्तर–2 एवं प्रस्तर–3 में उल्लिखित है।

5– चूँकि सांकेतिक मूल्य की धनराशि, वार्षिक लीज रेण्ट की धनराशि एवं लीज की अवधि के संबंध में तीनों विभागों द्वारा कोई स्पष्ट अभिमत नहीं दिया गया है वरन् अनापत्ति व्यक्त कर दी गयी। अतः उपरोक्त विभाग द्वारा किये गये प्रस्ताव पर मा० मंत्री जी एवं मा० मुख्य मंत्री जी का अनुमोदन प्राप्त करके निर्णय लिया जाना है ताकि तद्नुसार पट्टा विलेख के रिक्त स्थानों की पूर्ति करते हुये पट्टा विलेख न्याय विभाग से विधीक्षित कराया जा सके और अग्रेतर कार्यवाही की जा सके।

कृपया उपरोक्त स्थिति से अवगत होते हुये गत पृष्ठ के प्रस्तर –4 पर मा० मंत्री जी के माध्यम से मा० मुख्य मंत्री जी का अनुमोदन/आदेश प्राप्त करना चाहें ताकि तद्नुसार अग्रेतर कार्यवाही की जा सके। ”

(emphasis supplied)

42. Just below the aforesaid, following noting was made by Sri Shri Prakash Singh, Secretary of the Minority Department on 27.12.2014, seeking approval from the Urban Development Minister and Hon’ble Chief Minister in respect of paragraph no.4:-

“क” {

“वि०सचिव

सचिव उक्त टिप्पणी का अवलोकन करना चाहे तथा उक्त टिप्पणी के प्रस्तर–4 (गतपृष्ठ–127) पर मान० नगरविकास मंत्रीजी तथा मान० मुख्यमंत्री जी का अनुमोदन प्राप्त करना चाहे।”

(emphasis supplied)

43. Just below the said noting, the Cabinet Minister in his own handwriting, requested the Urban Development Minister to make

arrangement for girls education. The said noting dated 01.01.2015 written and signed by the Minister reads as follows:-

> "मा० नगर विकास मंत्री जी
>
> कृ. उच्च वर्ग की शिक्षा के लिये जिसके लिये रामपुर मे बहुत कुछ किया गया है। बच्चियों की व्यवस्था के बाद नौनिहालों के लिये किये जाने वाले उदगार का धन्यवाद करते हुए निर्णय लेना चाहें।"

(emphasis supplied)

44. Then, on 27.01.2015, the Cabinet Minister, in his own handwriting made an endorsement approving the proposal at "क", i.e. the note of the Secretary of his own Ministry for seeking approval of the Urban Development Minister and Chief Minister in respect of proposal No.4 at page 127 (4 प्रस्तर–4 पृष्ठ–127)[24]. The proposal no.4 at page 127 was regarding fixation of notional premium of Rs.1,000/- and annual rent of Rs.100/- and its enhancement by 10% at the time of renewal after 33 years. The reason given by the Minister for the aforesaid approval was that the decision in relation thereto was already approved by the Cabinet. The note is as under:-

> "मा० मंत्री,
> अल्पसंख्यक कल्याण
>
> अवगत तथा (क) अनुमोदित जैसा कि मा०– मंत्री परिषद द्वारा स्वीकृत किया गया है।
>
> ह० मो० आजम खां
> 27.01.2015"

45. It may be noted here that the only approval given by the Cabinet was to item No.2 regarding creation of lease in favour of the petitioner-trust and to work out the modalities in respect of fixation of premium of the lease and lease rent as per extant Rules. It is noteworthy that the Cabinet Minister, deliberately or by oversight,

24. Para 41 of the instant judgment

assuming the said approval to be the approval granted by the Cabinet to the premium amount and lease rent, himself proceeded to accord approval to the proposal made in this behalf. While doing so, he conveniently overlooked the consistent notings on the file for getting the premium value and lease rent fixed after seeking opinion of the Revenue and Finance Departments keeping in mind the relevant rules.

46. From the aforesaid proceedings, it is clear that there was no clear approval, either from the Law Department or from the Finance Department or Revenue Department with respect to fixation of lease rent or other financial aspects except the alleged approval granted by the Cabinet Minister himself on 27.01.2015. It is, therefore, established that the Minister himself was the proposer as well as approver of the decision relating to duration of lease as well as lease rent amount.

47. Then, just after two days, on 29.01.2015, the Special Officer-II, Law Department of U.P. Government, records on the file that the draft lease deed has already been vetted and, therefore, proceedings in accordance with the previous decision be undertaken. On 04.02.2015, a lease deed was executed between the State and the petitioner-Trust. We may record here that from the first page of the lease deed dated 04.02.2015 itself, it is clear that the same was executed on the request of the lessee, i.e. the petitioner-Trust. Apparently, Mohd. Azam Khan, being lifetime Chairman of the said Trust, was proposer behind the creation of lease and he himself was the beneficiary of the lease granted. The request of the lessee stands clearly reflected from the words "और चूंकि पट्टादाता ने पट्टेदार के अनुरोध पर जनपद रामपुर के ग्राम ठोठर की खतौनी नान जेड०ए० के खाता संख्या–46 की गाटा संख्या... ... ... कुल 8 किता रकबा 1.314 हे० जो मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान, (अल्पसंख्यक कल्याण एवं वक्फ विभाग) के नाम श्रेणी 12(4) अन्य कारण अकृषिक भूमि के अन्तर्गत दर्ज अभिलेख है, तथा जिसमे

4252.07 वर्ग मी० निर्मित क्षेत्रफल एवं 8887.93 वर्ग मी० अनिर्मित (ओपेन) क्षेत्र है जिसका विवरण इस पट्टा – विलेख की अनुसूची में दिया गया है, को पट्टे पर पट्टेदार को देने पर सहमति व्यक्त किया है; और चूँकि उक्त भूमि पर अल्पसंख्यक कल्याण एवं वक्फ विभाग, उत्तर प्रदेश के अधीन मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान, रामपुर का भवन स्थित है; और चूँकि इस निमित उत्तर प्रदेश सरकार (जिसे एतद्पश्चात "राज्य सरकार कहा गया है") कार्यालय ज्ञाप संख्या –– 1715/52–2–2014–2(102)/ 2013, दिनांक 20 नवम्बर, 2014 द्वारा पट्टेदार के नामे अभिव्यक्त अधिकारी, निर्बन्धनो एवं विभिन्न प्रसंविदाओं तथा अनुबंधो के अधीन मौलाना मोहम्मद अली जौहर प्रशिक्षण एवं शोध संस्थान की उक्त भूमि मय भवन मौलाना मोहम्मद अली जौहर ट्रस्ट को पट्टे पर दिये जाने के लिए सहमत हुए है।

(emphasis supplied)

48. On 03.03.2015, a Government Order was issued amending Clause 16 of the aims and objectives of the Research Institute, substituting higher education with primary and secondary education. This was got done to enable opening of one more branch of a CBSE recognised institution, viz Rampur Public School, in the building of Research Institute. Rampur Public School was run by none other but the Petitioner-Trust itself. It already had several branches in District Rampur.

49. Apart from the aforesaid proceedings, if we examine the legal requirements qua creation/ grant of lease and various other aspects relating thereto, we find that the procedure prescribed under Clauses 361, 366 and 368 of Chapter XIX of Revenue Manual was not followed. Relevant portions of the said clauses are reproduced herein below:-

> "361. (1) Government Lands may be disposed of-
>
> (a) by sale at full market value or exchange with private land of equal value;
>
> (b) by grant of favourable terms to a public Body or Association or to an individual for a public purpose subject to the condition that no concession shall be allowed in ground rent;
>
> (c) by gift or grant to a public body or association or to

an individual for a public purpose;

(d) by gift or grant to a private individual in remuneration for public services;

(e) by lease to individuals.

(2) The transfer contemplated in clauses (a) to (d) of sub-rule (1) above shall be made by the State Government in the Revenue Department while transfer mentioned in clause (e) shall be made by the officers authorised by the Government.

(3) No Government land of any kind shall be disposed of by lease or grant or in any other manner without the reservation of the right of Government to mines and minerals below the surface, and right of access to and reasonable facilities for working the same on the part of the Government or its assignees.

366**.** Normally the Government lands shall be managed by grant of lease under the Government Grants Act, 1895 for a specific purpose, such as for agricultural, residential, commercial, industrial or charitable purposes, with or without premium, subject to special instructions issued by the State Government in respect of some areas for special reasons.

368. The following rules shall govern the grant of building leases-

(i) The land categorised as culturable waste, abadi site or unculturable waste belonging to the Government may be leased out for building for housing, commerce, industry or charitable purposes.

(ii) In allotting land for building a house in rural areas, the following order of preference may be observed-

(a) an agricultural labourer or village artisan residing in the village and belonging to scheduled caste or scheduled tribe;

(b) Any other agricultural labourer or village artisan residing in the village.

(c) A bhumidhar or Asami residing in the village and holding land less than 1-26 hectares (3.125 acres).

Note- Only persons having no house shall be eligible for allotment of house site on Government land.

(iii) In allotting land for building a house in an urban area, the following order of preference may be observed:

(a) a person with annual income below Rs. 5000/-

b) a person belonging to low income group with annual income above Rs. 5000/- but still belonging to low income group."

(c) a person belonging to middle income group.

Note- No person belonging to higher income group shall be entitled to allotment of Government land for residential purposes. *Note*- Only person having no house shall be eligible for allotment of house site on Government land.

(iv) The State Government may prepare a housing scheme on any piece of land for any group of persons in which case the order of preference prescribed in sub para (ii) and (iii) need not be observed.

(v) While allotting land for industrial purpose, preference will be given to cottage industry.

(vi) (1) The allotment of land for building purposes shall be carried out under the Collector's orders.

(2) Such lease shall, however, be sanctioned by-

(a) The Collector, if the value does not exceed Rs. 25,000.

(b) The Commissioner, if the value exceeds Rs. 25,000/- but does not exceed Rs. 50,000/-

(c) the Board of Revenue, if the value exceeds Rs. 50,000 but does not exceed Rs. 1,00,000 and

(d) The State Government in other cases.

(3) The lease deed shall be executed by the Secretary to the Government in the Revenue Department, the Board of Revenue, the Commissioner and the Collector Whosoever sanctions the lease.

The form of building lease should be prescribed by the Board of Revenue.

(vii) Whenever the Collector proceeds to allot house sites, he shall cause it to be announced by beat of drum in the village or in the vicinity in the town, the exact location of the sites to be allotted, the date and the venue of the allotment. The Collector will also depute an officer, not below the rank of a Land Records Inspector, for purposes of receiving applications for allotment of house sites. The officer so deputed will scrutinise all claims and submit his report to the Collector through the S. D. O. and the Tahsildar. Where more than one person belonging to the same order of

preference express their desire to be allotted a particular site, the Naib Tahsildar or the Tahsildar shall draw lots to determine the person to whom the site should be allotted. The Collector after considering the report will pass final order submit the proposal to the Commissioner, Board of Revenue, or the State Government depending on the value of the land being leased out.

(viii) For allotment of land for a building other than a house the above procedure will be followed as may be practicable with suitable modifications as the Collector may deem fit.

(ix) Lease Rent. The annual lease rent shall be leviable as under: Rural Area-Rent calculated at rates applicable for calculation of land revenue for similar land.

(emphasis supplied)

Urban Area

(1) For residential purposes- Rent shall be calculated at rates chargeable by Development Authorities of State.

(2) For other purposes- the annual rent shall be 2, 1/2 times of the rent chargeable for residential purposes.

Note- The lease rent on building leases in urban areas shall normally be realised for 90 years in lump sum at the time of execution of lease deed. The lessees of weaker sections to whom site measuring upto 40 sq metres is allotted shall have facility of making payment of rent annually at their option.

(x) Premium- No premium shall be charged for house sites measuring upto 80 sq metres in rural areas allotted to persons belonging to category (a) or (b) of sub-para (ii) above and measuring upto 40 sq metres in urban areas allotted to persons belonging to category (a) of sub-para (iii) above. Premium shall be chargeable from all other persons and purposes at the rates-

(a) Rural Areas-40 times the annual rent payable,

(b) Urban Areas-Market Value calculated at rates fixed by Collector under Rule 340-A of Stamp Rules for purposes of Stamp duty.

(xi) All cases for leases which involve a concession in favour of the lessee, e.g. in which it is proposed to fix the rent at a lower rate than prescribed in subparagraph (ix) or in which it is proposed to charge premium lower than the market value, shall be submitted for the order of the State Government.

(xii) ……..

(xiii) The conditions of the lease, unless provided otherwise in a particular case or class of cases by the State Government, shall be as under-

(a) The lease initially will be for a period of 30 years and a lessee shall have an option to get it renewed twice for a further period of 30 years each. The Government shall have a right to enhance the annual rent which shall not be less than 1, 1/2 times of the previous rent at time of each renewal,

(b) ……...

(c) ……...

(d) ……..

(e) if the land is no more required for the purpose for which it was leased, the same will be surrendered to the Government without any claim for compensation.

(f) ……...

(xiv) For matters relating to lease of land for building purposes in urban areas not covered under these Rule, the rules of the Nazul Manual shall be consulted.

(emphasis supplied)

50. The aforesaid provisions of U.P. Revenue Manual describe a step by step procedure to be followed in case of grant of government land also. We find that no such procedure nor any other transparent procedure was followed while creating lease in favour of petitioner-Trust. In fact, it was the Cabinet Minister who was completely instrumental in managing the affairs in his own way. All concerns and apprehensions expressed from time to time, by different officials, were conveniently overruled or got overruled by the Secretaries of his own Ministry. He succeeded in getting the period of lease as well as lease rent fixed in such a manner that property worth crores came to be settled in favour of his private trust for nothing.

51. We now proceed to examine whether in the facts and circumstances noted above, the grant of lease in favour of petitioner-Trust would be rendered vulnerable to attack on ground of "conflict of

interest". It would be advantageous to first have an overview of the concept as prevalent globally and in our country.

'Conflict of Interest' in Global Paralance

52. The United States is the country with oldest and most developed conflict of interest Regulations. The Ethics laws in different States require elected officials including legislators to disclose financial information as a means of discouraging conflicts between official duties and private interests. For example, in State of Alabama, a 'conflict of interest' involves any action, inaction, or decision by a public official or public employee in the discharge of his or her duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.

53. A 'conflict of interest' shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation. Ala Code §36-25-5.

54. In State of Alaska, a 'conflict of interest' exists if the legislator or a member of the legislator's immediate family has a financial interest in a business, investment, real property, lease, or

other enterprise if the interest is substantial and the effect on that interest of the action to be voted on is greater than the effect on the general public of the state. Alaska Stat. Ann. § 24.60.030.

55. In State of Arkansas, a ‘conflict of interest’ may exist if a legislator is required to take an action in the discharge of his or her official duties that may affect his or her financial interest or cause financial benefit or detriment to him or her, or a business in which he or she is an officer, director, stockholder owning more than 10% of the stock of the company, owner, trustee, partner, or employee, which is distinguishable from the effects of the action on the public generally …..…”

56. In State of California "no public official at any level of State or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Cal. Gov't Code § 87100. Subsequent statutory sections provide additional details and prohibitions regarding conflicts of interest.

57. In State of District of Columbia, a ‘conflict of interest’ exists if an official uses "his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter in a manner that the employee knows is likely to affect on the employees’ financial interest or the financial interest of a person closely affiliated with the employee. D.C. Code Ann. § 1-1162.23

58. In State of Florida, a ‘conflict of interest’ exists if there is "any matter that the officer knows would inure to his or her special private gain or loss." "Special private gain or loss' means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal. Fla. Stat. Ann. § 112.3143. In State of Georgia, "conflict of interest' means an individual has multiple interests and uses his or her official position to exploit, in some way, his or her position for his or her own direct, unique, pecuniary, and personal benefit." Ga. Code Ann § 45-10-90. In State of Maryland, "an interest of a member of the General Assembly conflicts with the public interest if the legislator's interest tends to impair the legislator's independence of judgment." Md. Gen. Provis. § 5-512.

59. Anne Peters and Lukas Handschin in their book ‘Conflict of Interest in Global, Public and Corporate Governance’ by Cambridge University Press, while defining ‘Conflict of Interest’ referred to old adage that one cannot serve two masters. Michael Davis in his book ‘Conflict of Interest’ defines it as ‘a situation in which some intent of a person has a tendency to interfere with the proper exercise of his judgment in another’s behalf’.

‘Conflict of Interest’ in Indian Paralance

60. In India, conflict of interest is, to some extent, taken care of under the Prevention of Corruption Act, 1988. Section 2(c) of the Act defines the term "public servant" to include any person who holds an office by virtue of which he is authorized or required to perform any public duty. Section 2(d) defines the term "undue advantage" as any gratification, other than legal remuneration, which a person is not legally entitled to.

61. The Prevention of Corruption Act, 1988, provides for stringent penalties for public servants who indulge in corrupt practices, including conflicts of interest. The Act prohibits public servants from obtaining any undue advantage for themselves or for anyone else by corrupt means. Any person found guilty of committing an offense under the Act is liable to imprisonment for a term of not less than six months and up to seven years, along with a fine.

62. There have been many instances of politicians holding multiple positions, which give rise to a conflict of interest. In such cases, the politicians may use their position or power for personal gain or to benefit their family members. To address this issue, the Election Commission of India has issued guidelines for/political parties and candidates. The guidelines require the candidates to disclose their assets and liabilities, along with those of their spouses and dependents, before filing their nomination papers. Furthermore, the guidelines require that candidates must declare any criminal cases pending against them and their family members. The guidelines also prohibit candidates from holding multiple positions, which may give rise to a conflict of interest.

63. Unfortunately, in our country, we do not have any legal framework for the public representatives (legislator and ministerial) where they may have to mandatorily disclose their interest in the subject matter they deal with. This, at times, has led to charges of corruption, nepotism and favoritism. The courts of law have come across several cases of conflict of interest in course of decision making by the politicians and where the decision/action has been struck down on the said ground. We may refer to some of the judgments of the Supreme Court to throw light on the doctrine.

64. The Supreme Court, in the case of **A.K. Kraipak Vs. Union of India**[25], while dealing with a case of selection process and presence of the Chief Conservator of Forests in the selection proceedings resulting in conflict of interest, observed in paragraph no.15 of the report as under:-

> "it is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then, under the circumstances, it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. 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 particularly that of Basu 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. Under those circumstances it is difficult to believe that he could have been impartial. 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. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. 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. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of

25 (1969) 2 SCC 262

selected candidates".

65. The judgment in the case of **A.K. Kraipak (supra)** has been followed by the Supreme Court in the case of **Board of Control for Cricket in India Vs. Cricket Association of Bihar**[26].

66. The Supreme Court, almost two decades back, in the case of **R. Sai Bharathi Vs. J. Jayalalitha and others**[27], dealt with the issue as to whether the respondent J. Jayalalitha, being a public servant, had committed offence under Section 169 IPC. The Supreme Court elaborately laid down the first principles to be observed by public servants in public life while dealing with matter where there is likelihood of conflict of interest between the office one holds and the act to be done. In paragraph no.59 of the report, it was observed as follows:-

> "59. Report leading to IPC makes it clear that criminal law merely prescribes the minimum standards of behaviour, while in public life, those who hold high offices should not take shelter under the umbrella of criminal law but stand by high probity. Further, criminal law is meant to deal with criminals ordinarily, while Code of Conduct is observed as gentlemen's agreement. Persons in public life, who are gentlemen, follow such Code instead of taking escape routes by resorting to technical pleas as arise in criminal cases. Persons in public life are expected to maintain very high standards of probity and, particularly, when there is likely to be even least bit of conflict of interest between the office one holds and the acts to be done by such person, ought to desist himself from indulging in the same. Such standards of behaviour were scrupulously observed in the earlier days after independence, but those values how now dwindled and instances of persons holding high elective offices indulging in self- aggrandisement by utilising government property or in distribution of the largesse of the Government to their own favourties or for certain quid pro quo are on the increase. We have to strongly condemn such actions. Good ethical behaviour on the part of those who are in power is the hallmark of a good administration and people in public life

26 (2015) 3 SCC 251
27 (2004) 2 SCC 9

> must perform their duties in a spirit of public service rather than by assuming power to indulge in callous cupidity regardless of self imposed discipline. Irrespective of the fact whether we reach the conclusion that A-1 is guilty of the offences with which she is charged or not, she must atone for the same by answering her conscience in the light of what we have stated not only by returning the property to TANSI unconditionally but also ponder over whether she had done the right thing in breaching the spirit of the Code of Conduct and giving rise to suspicion that rules and procedures were bent to acquire the public property for personal benefit, though trite to say that suspicion, however strong, cannot take place of legal proof in a criminal case and take steps to expiate herself."
>
> (emphasis supplied)

67. In the case of **Orissa Olympic Association through General Secretary Vs. State of Orissa and another**[28], the Supreme Court dealt with a case of conflict of interest where the son and son-in-law of the General Secretary of the Orissa Olympic Association were partners in M/s Incon Associates and, while referring to its previous judgment in the case of **Board of Control for Cricket in India (supra)**, it was held in paragraph no.59, as follows:-

> *"*59. Another aspect which cannot be ignored relates to conflict of interest. Vide order dated 9.3.2016, this Court had noted that the son and son-in-law of Mr. Asirbad Behera, General Secretary of the Orissa Olympic Association, were partners. In this regard, we may refer to a two-Judge Bench decision in BCCI v. Cricket Assn. of Bihar (2015) 3 SCC 251 wherein the Court, taking note of the finding of the probe committee, has held that serious issues of conflict of interest adversely affect the game of cricket which is so popular in this county. It is bound to shake the confidence of the public in general. The said finding was recorded in the context of the affairs of BCCI. The concept of conflict of interest is well established. A person who is accountable to the public and deals with public affairs is not expected, as required under the law, to have any personal interest. He is not to act in a manner where it is perceived that he is directly or indirectly the

28 (2017) 14 SCC 22

> beneficiary; or for that matter, extends the benefit to a person of immediate proximity."
>
> (emphasis supplied)

68. We may also gainfully refer to the judgment of the Supreme Court in the case of **Common Cause (supra)** in which the Apex Court found the conduct of the petitioner in making allotments of petrol outlets as atrocious, specially those made in favour of Members, Oil Selection Board or their sons, etc., and found that it reflected a wanton exercise of power by the petitioner. Condemning the act of the Minister concerned, the Apex Court observed that the concerned petitioner does not, on becoming the Minister of State for Petroleum and Natural Gas, assume the role of a "trustee" in the real sense nor does a "trust" come into existence in respect of the government properties.

69. The Supreme Court, in the case of **Institute of Law, Chandigarh (supra)**, by referring to its previous judgments, observed that for achieving the goals of justice and equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels. The laws enacted by Parliament and the State Legislatures bestow upon them powers for effective implementation of the laws enacted for creation of an egalitarian society. The exercise of power by political entities and officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good and in our constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the

concept of the rule of law.

70. Learned Advocate General in support of his plea pertaining to 'conflict of interest' also took aid of decision of the Supreme Court in the case of **Secretary, Jaipur Development Authority (supra).** It was argued that the Supreme Court, in the said case, has held as under:-

> "the Minister holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy. The acts done and duties performed by him are public acts and duties as the holder of public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the authority concerned by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. All actions of the Government are performed through/by individual persons in collective or joint or individual capacity. Therefore, they should morally be responsible for their actions. The Government acts through its bureaucrats, who shape its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government. The actions are intended to further the goals set down in the Constitution, the laws or administrative policy. The action would, therefore, bear necessary integral connection between the 'purpose' and the end object of public welfare and not personal gain".
>
> (emphasis supplied)

71. It was also held in **Secretary, Jaipur Development Authority (supra)** as under:-

> "the Minister is responsible not only for his actions but also for the job of the bureaucrats who work or have worked under him. He owes the responsibility to the electors for all his actions taken in the name of the Governor in relation to the Department of which he is the head. If the Minister, in fact, is responsible for all the detailed workings of his Department, then clearly ministerial responsibility must cover a wider spectrum than mere moral responsibility. The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when, in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same."
>
> (emphasis supplied)

72. The Supreme Court, in paragraph 114 of **State (NCT of Delhi) (supra)**, has reiterated the ratio in the case of **Secretary, Jaipur Development Authority (supra)**.

73. On the other hand, learned Senior Counsel appearing for the petitioner submits that the aforesaid judgments have no application to the facts of the present case. He submits that in most of the cases, action of an individual minister was under scrutiny, whereas, in the present case, the decision which has been nullified by the impugned action, was a conscious decision of council of ministers. The learned Senior Counsel, while responding to the arguments of the State and by referring to the judgment of Apex Court in the case of **Kaushal Kishore (supra)**, and elaborating the arguments on 'conflict of interest' or the vicarious liability of the Government in relation to an

act done by its Minister, vehemently argued that the statement made by a minister, traceable to any affairs of the State or for protecting the Government, cannot always be attributed vicariously to the Government itself in view of the principles of collective responsibility. The Government is responsible for the action of council of ministers in view of the concept of collective responsibility and not to any action of an individual minister. There was no conflict of interest in the present case even though the Cabinet Minister was involved in the decision making process. In any case, even if such a plea is examined, the record reflects "synergy of interest" and not "conflict of interest", inasmuch as the purpose behind establishment of either Research Institute or Rampur Public School would remain a public purpose for advancement of education for the persons belonging to the minority community.

74. We immediately come to the judgment of **Kaushal Kishore** (supra), the sheet anchor of the case of the petitioner. It is a Constitution Bench judgment by five Judges' Bench. There were five questions which were answered by the Constitution Bench which were as follows: -

> … "(1) Are the grounds specified in Article 19(2) in relation to which reasonable restrictions on the right to free speech can be imposed by law, exhaustive, or can restrictions on the right to free speech be imposed on grounds not found in Article 19(2) by invoking other fundamental rights?
>
> 2) Can a fundamental right under Article 19 or 21 of the Constitution of India be claimed other than against the "State" or its instrumentalities?
>
> 3) Whether the State is under a duty to affirmatively protect the rights of a citizen under Article 21 of the Constitution of India even against a threat to the liberty of a citizen by the acts or omissions of another citizen or

private agency?

4) Can a statement made by a Minister, traceable to any affairs of State or for protecting the Government, be attributed vicariously to the Government itself, especially in view of the principle of Collective Responsibility?

5) Whether a statement by a Minister, inconsistent with the rights of a citizen under Part III of the Constitution, constitutes a violation of such constitutional rights and is actionable as 'constitutional tort'? …"

75. The aforesaid questions arose in the backdrop of the then Minister for Urban Development, Government of U.P. having made certain statement in a press conference about an incident which happened with the petitioner (before the Supreme Court) while he was travelling from Noida to Shahjahanpur on National Highway No. 91 to attend the death ceremony of a relative. His case was that a gang intercepted him on the highway and snatched cash and jewellery in his possession and his family members and they also gang raped his wife and minor daughter. He had lodged a First Information Report about the said incident and various newspapers and television channels also reported the ghastly incident. However, the Minister, in his press conference, termed the incident as a political conspiracy. The petitioner apprehended that there would not be fair investigation. He also felt offended by the irresponsible statement made by the Minister and therefore, filed writ petition before the Supreme Court under Article 32 for monitoring the investigation in the F.I.R. lodged by him and for transferring the trial of the case to some other State and also for registering a complaint against the Minister for making statements outraging the modesty of the victims. Another writ petition filed in public interest was from State of Kerala in the backdrop of a statement made by Minister for Electricity in the State which was considered to be highly derogatory to the women folk. Consequently, a direction

was sought to the Chief Minister of the State to form a Code of Conduct for the Ministers and to take suitable action against the said Minister for his utterances.

76. Question no. 4 on which reliance was placed by Sri Saxena, was answered by the Supreme Court as follows:

> "151. Therefore, our answer to Question 4 would be that a statement made by a Minister even if traceable to any affairs of the State or for protecting the Government, cannot be attributed vicariously to the Government by invoking the principle of collective responsibility."

77. The argument for making the Government vicariously liable for statement of Minister was that his action was traceable to the discharge of public duty and is subject to scrutiny of law. A Minister, being a functionary of the State, represents the State while acting in his official capacity. Therefore, any violation of fundamental rights of the citizen by the Minister in his official capacity would be attributable to the State. In respect of Question no. 5, the contention was that official act of a Minister which violates the fundamental rights of the citizens, would make the State liable under Constitutional torts. The Principle of Sovereign Immunity of the State for the tortious acts of its servants would not be applicable in case of violation of fundamental rights.

78. However, these contentions were not accepted and the Constitutional Bench, in para 140 and 149 of the Law Report on which reliance has been placed by learned Senior Counsel appearing for the petitioner as well, held as follows: -

> "140. What follows from the above discussion is, (i) that the concept of collective responsibility is essentially a political concept; (ii) that the collective responsibility is that of the Council of Ministers; and (iii) that such

> collective responsibility is to the House of the People/Legislative Assembly of the State. Generally, such responsibility correlates to (i) the decision taken; and (ii) the acts of omission and commission done. It is not possible to extend this concept of collective responsibility to any and every statement orally made by a Minister outside the House of the People/Legislative Assembly.
>
> 149. As all the literature on the issue shows, collective responsibility is that of the Council of Ministers. Each individual Minister is responsible for the decisions taken collectively by the Council of Ministers. In other words, the flow of stream in collective responsibility is from the Council of Ministers to the individual Ministers. The flow is not on the reverse, namely, from the individual Ministers to the Council of Ministers. "

79. The Constitution Bench has defined the concept of "collective responsibility" and how it percolates downstream from Council of Ministers to the individual Ministers and not from individual Ministers to the Council of Ministers. It is for the said reason that it was also held that a statement made by a Minister inconsistent with the rights of a citizen under Part III of the Constitution, may not constitute a violation of the constitutional rights qua the Government. It would not become an actionable claim as Constitutional tort against the Government. However, the exception is in cases where as a consequence of such a statement, any act of omission or commission is done by the officers resulting in harm or loss to a person/citizen.

80. The concept of 'collective responsibility of Council of Ministers' is an entirely different concept and has no semblance with the doctrine of 'conflict of interest'. While the former binds individual Minister to acts and omissions of the Council of Ministers, the latter prevents persons holding public office from indulging in self-

aggrandisation and enrichment by utilizing Government property or in distribution of largesse of the Government to their own benefit, or their favourites. The former is a constitutional concept defining the extent of liabilities of individual Ministers *qua* the decision of the Council of Ministers, while the latter is a gentleman's agreement to maintain high standards of probity in public life.

81. In order to judge whether an action falls foul of Article 14 of the Constitution on account of personal bias or conflict of interest, "the test is not whether bias was actually at work when the decision was taken. It is the reasonable likelihood of bias that determines whether the action can be faulted" (vide **Board of Control for Cricket in India vs. Cricket Association of Bihar**). In the said case, the main issue was whether any conflict of interest had arisen on account of Mr. Srinivasan, one of the Administrators of BCCI participating in the meeting of BCCI, in which decision was taken to award a hefty sum of compensation to India Cements Ltd., a company promoted by Mr. Srinivasan. The Supreme Court observed that "the fact that some others also participated in the decision making process as members of IPL Governing Council does not cure the legal flaw arising out of the benefactor also being the beneficiary of the decision."

82. The Supreme Court drew analogy from the judgment in **Kraipak's** case wherein Naqishbund participated in the selection proceedings even when he was himself a candidate in the selection. He had in fact recused himself from the proceedings when his own case was taken up for consideration. However, this did not impress the Supreme Court and it took the view that any such recusal did not make any material difference, as bias in such a situation operates in a subtle manner.

83. It is clear from the precedents noted above that for adjudging whether an action or a decision is bad in law on account of a conflict of interest, the test is only the reasonable likelihood of bias and not whether actual bias had taken place or not. It is grounded on the principle that a person holding high public office is expected to maintain very high standards of probity and "when there is likely to be even least bit of conflict of interest between the office one holds and the acts to be done by such person, (he) ought to desist himself from indulging in the same" (vide **R. Sai Bharathi vs. J. Jayalalitha**).

84. The Supreme Court, in the case of **A.C. Muthiah Vs. Board of Control for Cricket in India and others**[29], accepted the contention raised on behalf of the appellant that conflict of interest does not require proof of any actual pecuniary gain or pecuniary loss as the principle of 'conflict of interest' is a much wider, equitable, legal and moral principle which seeks to prevent even the coming into existence of a future and/or potential situation which would inhibit benefit or promise through any commercial interest in which the principal actors are involved. Supreme Court found substance in the contention that the entire purpose of 'conflict of interest' rule is to prevent and not merely to cure situations where the fair and valid discharge of one's duty can be affected by commercial interests which do not allow the fair and fearless discharge of such duties.

85. In the case at hand, the Cabinet Minister was well aware that his family run Trust and School would be the main beneficiaries of the grant. Instead of disassociating himself with the decision making process, he not only played active role in ensuring that the Research Institute is given on lease to his own Trust, but also on terms decided by him. Indisputably, he was holding the portfolio of Minister

29 (2011) 6 SCC 617

of Urban Development, and Parliamentary Affairs (w.e.f. 28.08.2003 till 13.05.2007) and Minister for Minority Welfare and Waqf, Government of Uttar Pradesh (w.e.f. 15.03.2012 till 19.03.2017). It was during this period that all crucial decisions were taken for creation of lease in favour of his family trust. He himself approved the Cabinet note and played active role in getting it approved. Also, he himself determined & fixed the premium of Rs.1000/- of valuable property valued Rs.20.44 crores and a paltry sum of Rs.100/- as annual lease rent. Being Minister in the same department, he was having full control over the file and its movement. He regretfully used his influence at every stage, camouflaging it behind public interest. It was a brazen misuse of power to perpetuate personal gains. The Minister knew that Rampur Public School was an affiliate of C.B.S.E. where the syllabus designed by the said Board would be taught and not Urdu or Arabic language, in clear departure of the main objective with which the Research Institute was established. The abolition of all posts of the Research Institute at the time of creation of lease on the pretext that same were not required, only proves that the intention was never to advance public interest, i.e. research and higher learning in Urdu and Arabic language but to promote his family run school. He succeeded in opening one more branch of CBSE recognized school apart from those already in existence. All the branches of Rampur Public School were controlled by the managing committee constituted by his family and he thereby came in control of the valuable property of the Government Research Institute.

86. It is noteworthy that when intervention application filed by Rampur Public School as well as its Principal was allowed by this Court on 13.12.2023 in the present proceedings, this Court expressed its concern about the ongoing studies of 733 students in Rampur

Public School who would be affected by impugned action and made a query to the State counsel as to how the State had secured the interest of the said students. An affidavit was directed to be filed from the State side in this regard. In pursuance thereof, an affidavit was filed on 18.12.2023 on behalf of the respondents no.1, 2, 3, 4, 6 and 7, *inter alia*, stating that the students who were studying in Rampur Public School, New Tehsil, Rampur, had been adjusted in/ transferred to other branches of the said school and also to other schools for the academic session 2023-24. It, therefore, follows that other branches of Rampur Public School were already functional in the same city and, hence, it is clear that the aim of the Minister was never to accomplish the objectives of the trust but to somehow or the other come in control of valuable State Land in guise of espousing a public cause.

87. It is clear that policy aspects, procedural aspects and financial aspects were deliberately given a complete go-by. The very grant of lease was an outcome of abuse and misuse of power by the Cabinet Minister. It is well established that what was not legally and directly possible and permissible, could also not be done indirectly, but the Hon'ble Minister acting without scruples and under influence of the public office he held, succeeded in circumventing the law. The submission advanced on behalf of the petitioner as regards 'collective or individual responsibility' and 'synergy of interest' is completely specious and untenable. The petitioner cannot avoid the consequences of the camouflaged actions of its Managing Trustee behind the veil of 'collective responsibility'. The bias was obvious and manifest and 'conflict of interest', deep rooted and pervasive. The entire exercise, since inception to end, fails to pass muster of Article 14 of the Constitution.

88. As regards the provisions contained under U.P. Revenue

Manual, learned Senior Counsel appearing for the petitioner, by referring to Clause 360, submits that land acquired for public purposes under any law relating to acquisition of land is to be managed by the acquiring department and utilized for the purpose for which the land has been acquired, whereas the land mentioned in Item No.6 of Clause 359 shall be managed in accordance with the Rules framed under special laws. He submits that the land belonging to the State Government under the management of any department, other than revenue department, will be managed by that department in accordance with the Rules and instructions of that department and that all other lands belonging to the State Government under the management of the revenue department are to be managed as per the Rules prescribed in Chapter XIX. He, by referring to Clause 361, submits that Government land may be disposed of by gift or grant to a public body or association or an individual for a public purpose and even lease can be created in favour of individuals. According to Sri Saxena, when the law contained in Chapter XIX permits such kind of grant, no illegality can be pointed out in respect of creation of lease in favour of the Trust. Further argument of Sri Saxena is that since the grant was made under the provisions of Government Grants Act, 1895, it would be saved by Section 3 of the said Act which clearly provides that all provisions, restrictions, conditions and limitations contained in any grant shall be valid and shall take effect according to the tenor, notwithstanding any decree or direction of a court of law or any rule of law, statute or enactment of the Legislature to the contrary. Sri Amit Saxena, learned Senior Counsel for the petitioner also placed reliance on the decision of the Supreme Court in the case of **Ram & Shyam Co. (supra),** in contending that where purpose of allotment is not revenue maximization but accomplishment of a constitutionally recognized public purpose, allocation by way of tender and auction is

not mandatory and, according to the petitioner, the said judgment also recognizes the said principle.

89. There cannot be any dispute to the legal proposition laid down in **Ram & Shyam Co. (supra)** that in appropriate cases the Government can enter into contract without taking the route of tendering or auctioning, but it should demonstrably be in public interest. We have discussed in foregoing paragraphs how the very grant of lease itself was illegal and void. We have also noted how the Hon'ble Minister himself was instrumental in getting the essential terms of lease settled so as to result in enrichment of family run Trust at the cost of State exchequer. The power to grant largesse by the State cannot be doubted, but not in the manner, as was done in the instant case.

90. This Court is fully satisfied that the creation/ grant of lease of the Research Institute in favour the petitioner trust was dehors the provisions of law and a result of gross abuse of the public office held by the Hon'ble Minister. There was a direct conflict of interest and the entire proceedings, culminating in the grant of lease in favour of the petitioner trust were void *ab initio*. Therefore, issue no. 1 is decided against the petitioner and in favour of the State-respondents.

Finding on Issue No.2

91. Now we proceed to analyze the contention as regards alleged violation of the principles of natural justice. There are two facets of the arguments. The first one is based on the law of equity and fairness. It was contended that the entire action, leading to cancellation of the lease and resumption of the premises, was done ex-parte. Neither show cause notice nor any opportunity of hearing was given to the petitioner before passing the impugned order dated

31.01.2023 whereby the Office Memorandum dated 20.11.2014 and all other subsequent orders were cancelled. The enquiry was also held by S.I.T. behind the back of the petitioner and without even letting it know of the exact charge against it. The impugned decision is a non-speaking one and thus non-est in the eyes of law. The second facet of the argument was that in case of breach of any condition of the lease agreement, the State Government, under Clause 10 of the lease, was obliged to serve thirty days notice on the petitioner-Trust before the forfeiture would become effective. However, no such notice was given. Therefore, the action of the State Government in terminating the lease on ground of violation of the conditions of the lease agreement was illegal and void.

92. On the adherence of principles of natural justice, emphasis has been laid by the petitioner upon two judgments of the Apex Court reported in **UMC Technologies Private Limited** (supra) and **Deepak Anand Patil** (supra). Another authority cited on behalf of the petitioner in **Re: Natural Resources Allocation** (supra) is on the point of fairness and reasonableness on the touchstone of Article 14 of the Constitution of India as regards an administrative action.

93. We may gainfully refer to some more judgments governing the first principles of the doctrine of a*udi alteram partem* rule.

94. In the case of **State of U.P. Vs. Sudhir Kumar Singh (supra)**, the Supreme Court observed that “the natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. Breach of the *audi alteram partem* rule cannot by itself, lead to the conclusion that prejudice is thereby caused. 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. 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 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. 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."

95. The question as to whether the Court, in exercise of powers under Article 226, is bound to declare an order of the government passed in alleged breach of principles of natural justice as void or whether the Court can refuse to grant relief on the ground that the facts of the case do not justify exercise of discretion to interfere or for the reason that *defacto* prejudice has not been shown fell for consideration in the case of **M.C. Mehta (supra)**, and it was held as under :-

> "15. …..The question however is whether the Court in exercise of its discretion under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no de facto prejudice is established. On the facts of this case, can this Court not take into consideration the fact that any such declaration regarding the 10.3.1999 order will restore an earlier order dated 30.7.1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order dated 10.3.1999 is set

> aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather than one for which it has no right after the passing of the latter order of this court dated 7.4.1998?
>
> 16. Courts are not infrequently faced with a dilemma between breach of the 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."
>
> (emphasis supplied)

96. On the point as to whether breach of principles of natural justice is, in itself, sufficient to grant relief and that no further de facto prejudice need be shown, the decisions in the case of **Ridge Vs. Baldwin**[30] and **S.L. Kapoor Vs. Jagmohan**[31] were considered by the Supreme Court time and again and it was stated as follows:-

> "20. ……..
>
> > "As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the 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 futile writs."
> >
> > (emphasis supplied)

97. The proposition that if, on the admitted or indisputable factual position, only one conclusion is possible and permissible, the court need not issue a writ merely because there is violation of principles of natural justice and as to whether relief can be refused where 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 to be followed, has been considered in the judgments of **Malloch v.**

30 1964 A.C. 40
31 (1980) 4 SCC 379

Aberdeen Corporation[32], **Glynn v. Keele University**[33], and **Cinnamond v. British Airports Authority**[34]. In particular, the observations made by **Straughton, L.J., in R. v. Ealing Magistrates' court ex p Fannaran**[35] that it must be 'demonstrable beyond doubt' that the result would have been different, are of significance.

(emphasis supplied)

98. We may also gainfully refer to the case of **Malloch v. Aberdeen Corporation (supra)** wherein, considering a challenge to a resolution on the ground that the same had been passed in contravention of the principles of natural justice inasmuch as the Committee had refused to receive written representations or to afford to the appellant a hearing before they passed the resolution, the following observations were made by **Lord Wilberforce,J**.

> "The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision against him was taken. But to show this is not necessarily enough, unless he can also show that if admitted to state his case he had a case of substance to make. A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him 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."

(emphasis supplied)

99. A similar view was taken in **Cinnamond v. British Airports Authority (supra)** wherein, considering a challenge on the ground of violation of principles of natural justice based on the contention that no opportunity to make a representation has been given, **Brandon LJ**. observed as follows :-

> "If I am wrong in thinking that some opportunity should have been given, then it seems to me that no prejudice was

32 (1971) 2 W.L.R. 1578
33 (1971) 1 W.L.R. 487
34 (1980) 1 W.L.R. 582
35 (1996) 8 Admn LR 351 (358)

> suffered by the plaintiffs as a result of not being given that opportunity. It is quite evident that they were not prepared then, and are not even prepared now, to give any satisfactory undertakings about their future conduct. Only if they were would representations be of any use. I would rely on what was said in Malloch v. Aberdeen Corpn (1971) 1 WLR 1578, first by Lord Reid and secondly by Lord Wilberforce. The effect of what Lord Wilberforce said is that no one can complain of not being given an opportunity to make representation if such an opportunity would have availed him nothing."

100. The applicability of the 'useless formality test' or the 'test of prejudice', in the context of the nature, scope and applicability of the principles of natural justice has been explained in **Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and others**[36] and it has been held that there may be situations where 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 and it may not be necessary to strike down the action and refer the matter back to the authorities to take a fresh decision after complying with the procedural requirements in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken.

(emphasis supplied)

101. Thus, in a case of a mere technical infraction of principles of natural justice where the facts are admitted and undisputed and no prejudice can be demonstrated, there is a considerable case law and literature for the proposition that relief can be refused if the Court thinks that the case of the petitioner is not one of 'real substance' or that there is no substantial possibility of his success or that the result would not be different, even if fresh opportunity is to be granted.

36 (2015) 8 SCC 519

102. A somewhat similar position arose before the Supreme Court in **Bishambhar Prasad vs. Arfat Petrochemicals Pvt. Ltd. and Others** (supra)**.** The main issue in the said case was whether the decision of the Council of Ministers to form a Committee to review decision taken by the predecessor ruling party resulting in cancellation of the lease and permission for conversion and sub-division granted during the regime of the previous government in favour of the respondent was valid or not. Like in the instant case, one of the arguments was that the decisions were taken behind the back of the respondent and the second one, that the reasons behind the action should be part of the final decision itself and could not be supplemented by affidavits filed in the proceedings. In this regard, reliance was placed upon the judgement of the Supreme Court in **Mohinder Singh Gill vs. The Chief Election Officer** (supra). It was contended that change of government could not be the reason for cancelling the decisions of the previous government. Further, the lessee was kept in dark about the deliberations throughout and had no forum to advocate its case or to prove that the allotment and conversion of land were legal, sound and valid. While examining the said plea, the Supreme Court considered the fact that the Cabinet Committee constituted in pursuance of the decision of the Cabinet deliberated over the matter for considerable period. It took into consideration the legitimacy of the power in granting the lease. The Supreme Court also took into account the fact that though the issue was raked up with a political favour but eventually the final decision centered around the lack of authority of the lessor. It was also noted that the presence of the lessee before the Cabinet Committee would not have made any difference and, accordingly, it was held that the contention based on breach of principles of natural justice would not come to the rescue of the lessee. The Supreme Court, in coming to the

said conclusion, relied on the previous judgements in **S.L. Kapoor vs. Jagmohan** (supra) and **K. Balasubramanian (Ex. Capt.) vs. State of Tamil Nadu**[37]**.** The relevant observations are extracted below:

> "**80.** On the face of these findings, the question that arises is whether Respondent No. 1, which actively participated in RIICO's decision making process and secured benefits without any authority in law, can be permitted to complain of a deprivation of the opportunity of being heard. We are of the considered opinion that the principle of *audi altrem partem* should not be an empty formality nor a compulsory ritual that must always be performed. The principal issue that arose for consideration before the Cabinet Committee pertained to the legitimacy of the power assumed by RIICO in respect of LIA, Kota, and not whether the permissions granted to Respondent No. 1 suffered from any propriety or legality. It is true that the issue was raked up with a political flavour, but eventually the final resolution centred around the RIICO's lack of authority. We do not think that Respondent No. 1 could render any assistance to the Cabinet Committee in the formation of their views. In any case, we have carried out an in-depth analysis of the entire gamut of documents and statutory rules, and have come to a firm conclusion that it was the State Government alone which was competent to accord necessary permissions to Respondent No. 1 under the 1959 Rules, and not RIICO in purported exercise of its powers under the 1979 Rules. Our holding is not confined to the decisions taken in favour of Respondent No. 1 alone, and shall encompass all other similarly placed lease-holders, with no discretion to the State Government to blow hot and cold and/or to take ad hoc decisions on a pick and choose basis. The only exception can be in a case where land has been expressly leased out to RIICO under Rule 11A of 1959 Rules and RIICO has further sub-leased the same land as per the scheme envisaged under clause (viii) of the said Rule.
>
> **83.** These decisions fortify our conclusion that

37 (1991) 2 SCC 708

> steps taken which are themselves vitiated, cannot form the basis for principles of natural justice to be applied. The supplementary lease deeds were signed by RIICO without any authority to do so. It similarly lacked the capacity to grant the permission for conversion of use for the land to commercial, and the allowance to sub-divide the plot. Thus, no legally vested right of Respondent No. 1 has been infringed and it has no legitimate ground to seek an opportunity to be heard in a matter strictly between RIICO and State Government."

103. In the instant case also, the decision of the previous Government has been cancelled. The record reveals that the Government did not act in any haste. Initially, the State Government constituted a Special Investigation Team, which enquired into the complaint and recorded statements of number of persons including Mr. Naseer Ahmad Khan, Member of Legislative Assembly/Secretary of the Trust, who happens to be a relative of the Hon'ble Minister and Mr. Sultan Khan, Principal, Rampur Public School. The S.I.T. submitted its detailed enquiry report dated 31.01.2020 to the Home Department. The Home Department took cognizance of the S.I.T. report and a meeting of High Powered Committee was convened on 16.03.2020 headed by the Additional Chief Secretary, Home and attended by Officers of various departments. The report of the S.I.T. was deliberated upon by the High Powered Committee and the same was accepted by it. The recommendations made by the S.I.T. were circulated to all concerned vide letter dated 29.06.2020 for further action. Thereafter, the matter was placed before the Cabinet and on 28.01.2023 it resolved to cancel the lease and all subsequent resolutions and actions of the previous Government. Pursuant to the decision of the State Government, Office memorandum dated 31.01.2023 was issued cancelling the decision to grant lease and attach the petitioner-trust with the Research Institute as well as lease

deed and rectification/amended deed and also various other office memoranda issued for the purpose.

104. The impugned Office memorandum dated 31.01.2023 clearly mentions that it was issued in furtherance of the Cabinet decision to cancel previous Office memoranda dated 20.11.2014, 30.01.2015, 03.03.2015, 17.03.2015 and the lease as well as amended lease deed. It does not mention about breach of any condition of the lease as a ground for taking the aforesaid action. Only in the consequential order issued by the Director, Minority Welfare, Lucknow dated 31.01.2023, addressed to different authorities to ensure compliance of Office Memorandum dated 31.01.2023, there is a passing reference to the breach of conditions of lease. However, it is evident from the original record that the paramount consideration for taking the action was the fact relating to the Hon'ble Minister concerned being the driving force behind the decision of the previous Government, resulting in 'conflict of interest'.

105. In the facts and circumstances obtained above, an opportunity of hearing to the petitioner would have made no difference since the action was taken by Cabinet primarily on basis of the material existing on record. As noted above, during course of hearing we gave full opportunity to counsel for the parties to go through the original record, take notes and to address the Court on all possible points. Counsel for the parties even made submissions, extensively referring to the record. We have confined our decision on Issue No.1 primarily to the plea of 'conflict of interest' bearing in mind the fact that going into other aspects, may result in prejudice to the petitioner.

106. At this juncture, we may also note that while adjudging the impugned action of the State Government in cancelling the decision of

the previous Government, we have taken into consideration only the facts and circumstances existing on record up to the date of grant of lease. We have consciously not considered any subsequent event nor the grounds relating to alleged breach of conditions of the lease as that would have, undoubtedly, required a notice and opportunity of hearing. As noted above, even main order of the State Government does not speak of forfeiture of lease but cancellation of the decision of the previous Government to grant lease. For the said reason, the argument based on Clause 10 of the lease deed is also rendered without any force.

107. In view of foregoing discussion, this Court is of the considered opinion that argument of the petitioner regarding infraction of the principles of natural justice has no real substance. Issue no. 2 thus stands decided against the petitioner and in favour of the State Government.

Finding on Issue No.3

108. The Court now comes to the last issue as to whether discretionary and equitable jurisdiction of High Court under Article 226 of the Constitution of India should be exercised in the facts and circumstances of the instant case.

109. The Apex Court, in the case of **Gadde Venkateswara Rao (supra)**, has observed that in case an illegal order is set aside by the High Court and that setting aside would restore another illegal order, the High Court would be justified to refuse exercise of its extraordinary discretionary power in the facts and circumstances of a particular case. The Supreme Court, in the case of **M.C. Mehta (supra)**, has held that the Court can, under Article 32 or under Article 226 of the Constitution of India, refuse to exercise its discretion of

striking down the order if such striking down will result in restoration of an illegal order.

110. In view of the finding on Issue No.1, this Court is of the considered opinion that even if the impugned decision of the State Government is assumed to be suffering from some procedural irregularity, any interference by this Court would result in revival of an absolutely illegal grant. We are of firm view that in order to save public property being frittered away in complete disregard of probity and good faith, we should decline to exercise discretionary and equitable jurisdiction under Article 226 of the Constitution in favour of the petitioner-trust. We, therefore, decide Issue No.3 against the petitioner-trust.

CONCLUSION

111. For all the aforesaid reasons, the Court is not inclined to interfere with any of the order/ notice/ Office Memorandum/ decision impugned in the present writ petition or grant any other relief claimed by the petitioner.

112. The writ petition fails and is, accordingly, dismissed, however, without imposing any cost.

113. The Bench Secretary shall forthwith return the original record to Sri Sudhanshu Srivastava, learned Additional Chief Standing Counsel for being transmitted to the State Government.

Order Date :-18.03.2024
AKShukla/-

(Kshitij Shailendra, J.) **(Manoj Kumar Gupta, J.)**