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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 02.07.2019
Pronounced on: 20.08.2019

\+ W.P.(C) 89/2019 & CM APPLs. 486/2019 & 14962/2019

RAJEEV AGARWAL ..... Petitioner

Through: Mr. Raj Kishor Choudhary, Mr.Shakeel Ahmed, Mr. Anupam Bhati and Mr. Nukul Chaudhary, Advocates

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC with Mr. T.P. Singh, Advocate for R-1 to R-3/UOI
Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Shishir Prakash, Mr. Vijay M. Chauhan and Ms. Karuna Krishan Thareja, Advocates for R-4 to R-6
Mr. Sandeep Prabhakar, Mr. Amit Kumar and Mr. Vikas Mehta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks mandamus for quashing of ex-parte report of Inquiry Committee dated 18.12.2018 and charge-sheet dated 21.08.2018 issued to the petitioner and further seeks direction to the

respondents to hold CBI/CVC Inquiry against the respondent no.6 for financial corruption being committed by the said respondent.

2. The brief facts of the case are that the petitioner, who is an officer of President level and senior most permanent employee of the company, Petronet LNG Limited, is the victim of highhandedness OF corrupt officers present within the company. Since the petitioner is a whistle blower against the corruption and has made various financial corruption charges against the respondent no.6, he being in the commanding position victimizing the petitioner without any rhyme and reason so that the petitioner be kept silence against the corruption.

3. The Petronet LNG Limited is a joint venture company formed by the Government of India to import LNG and set up LNG terminals in the country. It involves India's 4 leading central public undertaking companies namely GAIL, ONGC, IOCL & BPCL and these four PSU's have 50% share equity in the Petronet LNG Limited, thus, falls within the definition of '*State'* under Article 12 of the Constitution of India. As per section 17.3.2 of HR policies of Petronet LNG Limited, the person equal to the post of Vice President and above is entitled for one club membership. The petitioner being in the position of senior Vice President applied for one club

membership and the company made direct payment to the club and thereby he was allowed to take one club membership by the company itself in the year 2013 as per the prevailing rules. The said company invited a tender for 03.08.2015 for construction of one LNG storage tank at Dahej. Three parties purchased the tender documents and out of that, 2 bids were received on 31.03.2016. One bid was received from M/s L&T Hydrocarbon Engineering Limited and another was from M/s IHI Corporation, Japan. Since the bid of M/s L&T Hydrocarbon Engineering Limited did not meet technical eligibility criteria, its bid was rejected. The only single qualified bid of M/s IHI Corporation, Japan was opened on 10.05.2016 and it was found that the bidder had quoted around ₹640 crore EPC (Engineering, Procurement and Construction) costs (without taxes and duties). The petitioner being the member and the other members of the Tender Committee and the Director (Technical) and Director (Finance) objected to this high value tender, comparing the same bidder had been awarded contract for construction of two LNG storage tank at Dahej for ₹1042 crore and, therefore, value of one tank is around ₹521 crore. The petitioner as well as the others of the tender committee along with both Directors mentioned above were fully justified in objecting the same as *prima facie* the tender for ₹640 crore was very high.

The respondent no.6 being MD & CEO of the company instead of accepting the recommendation of tender committee, recommended to award the tender for ₹537.50 crore. However, M/s IHI Corporation, Japan did not agree with the present value of the tender and, accordingly, it was cancelled and the tender was re-invited. Since the tender was cancelled due to the stand taken by the tender committee of which the petitioner was also a member, the respondent no.6 became annoyed with the petitioner. Despite, outstanding career of the petitioner throughout his service, his annual performance report 2016-2017 was lowered from outstanding to good and he was transferred to Dahej from Headquarter, Delhi without having any position of President level at Dahej. Respondent no.6 favoured one Mr.Pushp Khetrapal who was a President (O&M) and also Chief Ethical Officer (Chief Vigilance Officer) in the company and he was made President (BD & Projects) and his reporting also got changed from Director (Technical) to Director (Finance) in order to promote unethical business practices as Chief Vigilance Officer, who is also made incharge of business development, head of procurements, head of projects and finance with him.

4. Being aggrieved by the aforesaid unethical practice of respondent no.6, the petitioner made a confidential letter/representation to the Chairman

of the company as well as Chief Vigilance Commissioner and Director CBI. The petitioner on 02.07.2018 wrote a letter to the Chairman of the Petronet LNG Limited about the financial and procedural irregularities committed by respondent no.6 in awarding foundation day celebrating contract to M/s Pine Tree Pictures Pvt. Ltd. owned by his family friends on the basis of nomination despite of the fact that the candidature of M/s Pine Tree Pictures Pvt. Ltd. had not been considered by the tender committee and without inviting any further tender, respondent No.6 without approval of tender committee awarded contract in favour of M/s Pine Tree Pictures Pvt. Ltd. for ₹55 lakhs and made advance payment without any bank guarantee violating rules and regulations of the company and with this letter the petitioner attached a copy of the approval note and the page of facebook showing, the proprietor of M/s Pine Tree Pictures Pvt. Ltd. family friend of respondent No.6 in evidence.

5. Being aggrieved by all these confidential communications made by the petitioner to the Chairman of the Petronet LNG Limited, the respondent No.6 started victimizing the petitioner and in this process, he issued a charge-sheet to the petitioner without any preliminary Inquiry. The petitioner was asked to submit his reply on the above charges on 31.08.2018

through email but the Senior Manager (HR) wrote a letter to the petitioner on 08.09.2018 that the reply submitted by the petitioner did not find to be satisfactory, therefore, an Inquiry committee was constituted and the petitioner was asked to defend himself before the Inquiry Committee. The petitioner sent a representation to the member of Inquiry Committee as well as the Chairman and MD & CEO/respondent no.6 of the company stating therein that the present Inquiry Committee has no legal force as the same has not been constituted with the approval of Chairman/Board of Directors and the Inquiry is being conducted at the instance of respondent no.6 against whom an Inquiry is already going on since earlier at the instance of the petitioner which is yet to be concluded. Just to pressurise the petitioner a false, frivolous and incompetent charge-sheet has been handed over to the petitioner for disclosing financial as well as the procedural corruption being committed by the respondent No.6 repeatedly.

6. Further case of the petitioner is that on 21.11.2018, the petitioner submitted an application before the Chairman of the Petronet LNG Limited for requesting to allow him an Assisting Officer for his defence before the Inquiry Committee but till date no Assisting Officer has been allowed to defend the petitioner before the Inquiry Committee and the Inquiry

Committee proceeded ex-parte and concluded the Inquiry against the petitioner by recording findings that all the three charges as levelled in the charge-sheet dated 21.08.2018 are proved. After recording of finding against the petitioner, the Senior Manager (HR) wrote a letter to the petitioner to submit his representation within one week upto 31.12.2018, failing which the competent authority will pass order on the charges levelled against him. After receiving the email dated 24.12.2018 sent by the company to the petitioner, on 31.12.2018 he sent an email to the Chairman with copy to Board of Directors, Prime Minister Office, Hon'ble Corporate Office and Finance Minister, Petroleum Minister, Cabinet Secretary, CVC, CBI, CAG, Secretary, Minister of Corporate Affairs, CVO etc.

7. Learned counsel for the petitioner submits that it is established that respondent no.6 has repeatedly violated the Companies Act 2013, rules made thereunder and rules & regulations of PLL and Board approved policy for doing corruption. The corruption by MD & CEO (respondent no. 6) of a company having significant role in energy security of country is a matter of national concern and cannot be confined to company alone. If a MD & CEO (respondent no.6) of the company is involved in corrupt practices, employees are duty bound to object and can write with supporting

information/documents to higher authorities, various transparency, accountability, investigation bodies of Government etc. for urgent action in the matter to prevent damage to company and country. Accordingly, the petitioner being "*Whistle Blower*" informed about following serious financial irregularities by MD & CEO (respondent no.6), mentioned in paragraph 20k in a tabular form of "*Grounds*" in the petition to various authorities such as Chairman PLL, Board member of PLL, CVC as well as CBI. However, no action has been taken against respondent no.6 on these following Corruption Charges so far:-

(a) Award of contract to respondent No. 6's daughter's firm M/s CUSTOM MADE FILMS without tender at exorbitant price of ₹16 lakh for making film of Dahej LNG Terminal, the highly sensitive film was uploaded on internet.

(b) Award of work of ₹ 55 lakh without tender to family friend's firm M/s Pine Tree Pictures Pvt. Ltd.

(c) Appointment of Shri Manoj Pawa as Sr. Vice President (HR&BE) in a single day in violation of provision of Companies Act 2013, without any advertisement. Shri Pawa is neither having requisite qualification nor experience.

(d) Award of contract of ₹ 36.27 lakh to M/s Giant Reel related to daughter firm M/s Custom made Films without tender. An additional amount of ₹ 4.65 lakh for travel/lodging & boarding was also paid to the firm illegally. Apart from this ₹ 3.19 lakh was also paid to M/s MAD Dance Company wrongly for appreciation of performance. Miscellaneous cases of corruption/unethical business practices, misconduct of Sh. Manoj Pawa, CEA to respondent No.6, while on deputation in Petronet LNG Ltd. from GAIL with the support of respondent No.6.

(e) Sh. Manoj Pawa, who is a crony of respondent NO.6, took special incentive of ₹ 1.5 lakh form PLL, without approval by Board.

(f) Sh. Manoj Pawa got his personal car-Honda City No. HR26BV1963 repaired many times from M/s Sugoi Motors at the cost of PLL.

(g) Sh. Manoj Pawa engaged Munna Kumar Singh, driver at the cost PLL, for which he is not entitled.

(h) Sh. Manoj Pawa has taken a laptop and ipad from PLL for which he was not entitled.

(i) Sh. Manoj Pawa and respondent No.6 with their wives visited Munnar Hill Station in September 2016 on holidays and used high end hired

cars at the cost of PLL.

8. Learned counsel for the petitioner further submitted that the respondents in their counter affidavits could not specifically deny these corruption charges levelled by the petitioner but argued various points with respect to maintainability of the writ petition and justifying in issuing chargesheet and proceedings etc.

9. On the issue of maintainability of the writ petition under Article 226 of the Constitution of India is concerned, learned counsel for the petitioner argued that the name of the Company is "*Petronet LNG Limited*", so it is a "*public Limited Company*" as per Section *'4- Memorandum –(1)"* of Companies Act 2013 and not a "*Private Company*" as wrongly mentioned at several places in counter affidavits by the respondents. PLL was formed as a joint venture company by Government of India in 1998, in pursuance of cabinet decision on 04.07.1997. The PLL is the instrumentality of Government because it comes under purview of "*other authorities*" of "*state*" under Article 12 of the Constitution of India, because:

(a) That the deep and pervasive control is exercised by government over administrative, financial and functional activities of PLL.

(b) That the central government directive dated 06.03.2007 to PLL

regarding fixation of gas prices was upheld by Hon'ble Supreme Court of India.

(c) That there is significant financial control by 50% shareholding by four Central Government PSUs.

(d) That the PLL fall within the purview of CVC.

10. Thus, it is submitted that the writ petition is maintainable as PLL is "*state*" within the meaning of Article 12 of the Constitution of India. To strengthen his arguments, reliance is placed on the case of ***Essar Steel Limited vs. Union of India and Others (Civil Appeal No. 4610 of 2009)*** the directive of Central Government to PLL under their letter dated 06.03.2007 was upheld by Hon'ble Supreme Court of India on 19.04.2016. Thus, it is obvious that the Government exercises administrative as well as financial control over PLL.

11. In addition to above, in the case of ***Delhi Integrated Multi Model Transit System Ltd. vs. Rakesh Aggarwal*** in ***W.P. (C) 2380-81/2010***, this Court under para 48, 55 & 59 of its judgement delivered on 06.07.2012 held as below:

> *"48. The argument of the petitioner that the Directors nominated by the GNCTD are non-executive Directors, whereas those nominated by the IDFC are executive or functional directors, whereas those nominated by the*

> *IDFC are executive or functional directors – is neither here nor there. Merely because the directors nominated by the GNCTD on the Board of Directors of the petitioner company are non-executive Directors, it does not mean that they have no role to play, or responsibility to share , in the decision making process of the Board. They are entitled to, and do participate in the Board meeting and are entitled to raise issues and even obstruct or oppose any move proposed by the Directors nominated by IDFC, if they are so instructed by the GNCTD, or if they are of the opinion that the same may not be in the overall interest of the company, or of the shareholder GNCTD – whom they represent on the Board of petitioner company. They perform a higher duty of participating on policy making, and, therefore, discharge a higher responsibility than the routine and mundane day-to-day tasks, which are left to be performed by others. Mere lack of day-to-day responsibility on the shoulders of the nominee directors of GNCTD does not dilute their powers, responsibilities and privileges as directors of the petitioner company."*

12. From the above judgement, it is obvious that four Directors from Central Govt. Public Sector Undertaking and Chairman from Ministry of Petroleum and Natural Gas and one Director from Govt. of Gujarat on the Board of PLL exercise substantial administrative, functional & financial Control over PLL.

> *"55. In the present case, the petitioner company had been initially incorporated/ established by the GNCTD. The equity share capital of the company, before GNCTD entered into the SHA with IDFC, had been fully subscribed to and paid-up by the GNCTD. Even after*

> *having entered into the SHA with IDFC, GNCTD's share capital contribution continues to be 50%, which is significant and therefore "Substantial" for the purpose of the Act."*

13. From the above judgement, it is obvious that 50% shareholding subscribed by Central Government Public Sector Undertaking in PLL is a significant holding.

> *"59. Merely because, the petitioner company is not receiving financial aid or assistance in the form of debt from the government, and the salaries and other expenses of the petitioner are being paid out of the conclusion that the petitioner company is not "substantially financed" by the Government." (Annexure J-2)*

14. Moreover, in the case of ***Petronet LNG Ltd. vs. Indian Petro Group and Another*** in CS(OS) No. 1102/2006, this court, under para 64 of its judgement pronounced on 13.04.2009 held as under:

> *"64. Though the plaintiff disputes that it performs any governmental or public function, it does not deny being a company with an equity base of Rs.1200 crores, of which 50% is subscribed by Central Government Public Sector Undertakings. Although such undertakings are not majority equity holders, and narrowly miss that description by one percent, nevertheless, they have a significant shareholding. Equally, the plaintiff does not deny – rather it even asserts that the negotiations conducted for the purpose of gas and allied products, are meant to service the needs of the community and the consumer base in India. Understood in a broad sense, therefore, it is engaged in a vital public function. Its other shareholders are no doubt, non-state entities. Yet, there is*

> *a crucial public interest element in its functioning; 50% of ₹. 1200 crores shareholding is controlled by the Public Sector understanding which are directly answerable to the Central government and parliament. Therefore, the claim for confidentially had to be necessarily from the view of the plaintiff's accountability to such extent as well as its duties which have a vital bearing on the availability and presence of gas in the country." (Annexure J-3)*

15. Learned counsel from the above judgements submitted that it is obvious that PLL is engaged in vital public function.

16. In the case of ***Indian Olympic Association vs. Veeresh Malik and Other*** vide W.P. (C) No. 876/2007, this court held as under:

> *"60. This court therefore, concludes that what amounts to "substantial" financial cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the percentage of funding is not "majority" financing, or that the body is an impermanent one, are not material. Equity, that the institution or organization is not controlled, and is autonomous is irrelevant; indeed, the concept of non-government organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not perform – or predominantly perform –"public" duties too, may not be materials, as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed. The organization may be a tool, or vehicle for the executive government's policy fulfilment plan. This view, about coverage of the enactment, without any limitation, so long as there is public financing ..."*
> *(Emphasis supplied) (Annexure J-4)*

17. In the case of ***Ajay Hasia and Ors vs. Khalid Mujib Sehmavardi & Ors: AIR 1981 SC 487***, the Hon'ble Supreme Court has also emphasized in para-11 as below:

> *"11. The court emphasized that the concept of agency or instrumentality of the government is not limited to a corporation or society created by a statute but is equally applicable to a company or a society and in each individual case would have to be decided on a consideration of relevant factors."(Annexure J-5)*

18. In case of ***Shree Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani: AIR 1989 SC 1607,*** the Hon'ble Supreme Court of India in para 19 considered the scope and extent of power of High Court to issue writs to those bodies performing public functions. The Supreme Court after referring to De Smith's Judicial Review of Administrative action and relevant case law held as under:

> *"19. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in article 12. Article 12 is relevant only for the purpose of enforcement of fundamental right under Article 32. Article 226 confers power on the High Court to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the state. They may cover any other*

> *person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty id imposed. If a positive obligation exists mandamus cannot be denied." It is also held that if any private organization discharge public function and public duties a writ of mandamus can be issued under Article 226 of the constitution of India." (Annexure J-6)*

19. Accordingly, learned counsel for the petitioner concluded his arguments on the maintainability and submitted that it is obvious that the words *"Any person or Authority"*, used in Article 226 of the Constitution of India, are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover other person or body performing public duty. Thus, the present petition is maintainable to be adjudicated by this Court.

20. On the issue of chargesheet and appointment of committee, learned counsel for the petitioner submitted that learned counsel of the respondents argued that section 178 (2) of Companies Act, 2013 does not mention that charge memo should be approved by the Disciplinary Authority and it can be approved by a Subordinate to the Disciplinary Authority. The learned counsel for the petitioner contradicted to the argument of learned counsel for

the respondents by arguing that charge memo/sheet issued to the petitioner is not approved by the Disciplinary Authority (Board of Directors) and it is signed by an officer five ranks junior to the petitioner and, therefore, is non-est in the eyes of law.

21. To strengthen his arguments on the point raised above, learned counsel for the petitioner cited the judgement of Hon'ble Supreme Court of India in the case of ***Union of India & Ors. vs. B.V. Gopinath: 2014 (1) SSC 351*** wherein in paragraph 41 and 55 held as under:

> *"41. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceeding, the charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under article 311(1) of the constitution of India. Such procedure would also do violence to the protective provision contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister."*
>
> *"55. Although number of collateral issues had been raised by the learned counsel for the appellants as well as the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge sheet/ charge memo having not been approved by the disciplinary was non-est in the of law." (Annexure J-7)*

22. Learned counsel for the petitioner argued that the respondents placed reliance on two judgements of Hon'ble Supreme Court of India and had filed copy of these two judgements in the court during arguments of the present case on 26.04.2019. One judgement was in the case of ***Inspector General of Police vs. Thavasiappan*** and the second one was in the case of ***Transport Commissioner vs. A. Radha Krishana Moorthy***. The judgement in the case of ***Transport Commissioner vs. A. Radha Krishana Moorthy*** is cited in the judgement in the case of ***Inspector General of Police vs. Thavasiappan***. The judgement of ***Inspector General of Police vs. Thavasiappan*** is cited under para 16 in the judgement of ***Union of India and Ors vs. B.V. Gopinath (2014 (1) SCC 351)***. As such both the judgements are quoted in the above mentioned case of ***Union of India and Ors vs. B.V. Gopinath***. The view taken in these two judgements has been rejected by the Hon'ble Supreme Court of India in the case of ***Union of India and Ors vs. B.V. Gopinath (supra).***

23. It is further submitted that these two Supreme Court judgements on which reliance is placed by respondents are also quoted under para 29 of the judgement in the case of ***Union of India and Ors vs. Sunny Abraham*** in the matter of ***W.P. (C) No. 7649/2015*** wherein this Court has held under

paragraph 30 as under:

> *"30. It is clear from the aforesaid quotation that earlier the view taken was that initiation of disciplinary proceedings can be by an authority subordinate to the appointing authority. This view was also responsible for the belief and foundation that the charge memo could be issued by an authority subordinate to the appointing authority and another approval viz. The formal charge sheet to be issued, was not required. This view has been specifically rejected and not accepted in B.V. Gopinath (supra). The ratio in B.V. Gopinath (supra) has to be applied with full vigour force in cases where there is violation of rules 14(3) of the rules for after the departmental proceedings are over, possibility of ex-post facto approval is unacceptable and it is in this context that the term non-est has been used."(Annexure J-8)*

24. Learned counsel for the petitioner argued that from the judgment of Hon'ble Supreme Court of India in para 3(ii) and judgement of this Court in para 3 (v) above, it is well settled that charge memo/sheet require approval of Disciplinary Authority before conducting disciplinary proceedings. It is, therefore, inferred that charge-sheet issued to the petitioner having not been approved by the Board of PLL being Disciplinary Authority under section 178 (2) of the Companies Act 2013, is non-est in the eyes of law. The disciplinary process is to germinate from Board of PLL being the disciplinary authority.

25. It is further argued that counsel for the respondents has shown the

noting on the file to this court containing alleged approval of charge-sheet by MD & CEO i.e. respondent no.6 and placed reliance on this approval. Learned counsel further argued that the competent authority (CA) towards the disciplinary action and punishment is MD & CEO i.e. respondent no.6 and placed reliance on sections 4.4.3 and 4.4.3.6 of HR Policies–Section 4–Standards of Conducts & Performance annexed as Annexure SA-1 and copy of minutes of Nomination and remuneration committee meeting annexed as Annexure SA-2 with the supplementary affidavit filed by the respondent nos.4, 5 & 6. Thus, it is necessary for clarification in the matter to reproduce relevant sections 6, 178 (2), 179 (1) and 179 (3) of the Companies Act 2013 and the same are, therefore, reproduced as below:

> *"**Section -6***
>
> *6. Act to override, Memorandum, Articles etc.-Save as otherwise expressly provided in this Act –*
>
> *a) The provisions of this act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this act; and*
>
> *b) Any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be."*

Section 178(2)

"(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance."

Section 179(1)

"179. Powers of Board
(1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:
Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:
Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting."

Section 179(3)

"*(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—*
(a) to make calls on shareholders in respect of money unpaid on their shares;
(b) to authorise buy-back of securities under section 68;
(c) to issue securities, including debentures, whether in or outside India;

(d) to borrow monies;
(e) to invest the funds of the company;
(f) to grant loans or give guarantee or provide security in respect of loans;
(g) to approve financial statement and the Board's report;
(h) to diversify the business of the company;
(i) to approve amalgamation, merger or reconstruction;
(j) to take over a company or acquire a controlling or substantial stake in another company;
(k) any other matter which may be prescribed:
Provided that the Board may, by a resolution passed at a meeting, delegate to any
committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:
Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section."

26. Accordingly, on perusal of provision statutorily approval of the Companies Act, 2013, it is crystal clear that:

(a) Disciplinary Authority in the petitioner is only Board of PLL under section 178(2) of the company act 2013 the petitioner being senior

management level officer holding the post of "President" as board of PLL is the appointing / removal authority.

(b) As per provision in section 6 (1) of the company act 2013, the provision of company act 2013, shall have effect not withstanding anything to the contrary contained in the memorandum, article of the company or any agreement executed by it in any resolution passed by company in general meeting or by the board of directors, whether the same be registered, executed or passed, as the case may be before or after the commencement of this act.

(c) As per provision in section 6 (b) of the company act 2013, any provision contained in the memorandum, article, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this act, become or to be void, as the case may be.

(d) As per provision under section 179 (1) of the company act 2103, the board of directors of the company shall exercise power as per the provision in this Act and not inconsistent therewith. The powers of the board of directors are specified under 179(3) of the Act.

(e) Board of Directors can delegate powers mentioned in sub clause (d) to (f) of section 179 (3) only. It is obvious that Board of Directors is not empowered to delegate disciplinary power to anybody.

27. Counsel for the petitioner further argued that the reliance placed by the respondents on the provisions of section 4.4.3 and 4.4.3.6 of H.R. policies–section 4–standards of conducts & performance is totally wrong, bad in law and utter violation of provision of section 6, 178 (2), 179 (2) and 179(3) of the Companies Act 2013. The Board of PLL has no power to delegate its disciplinary powers to anybody including MD & CEO under section 179 (3) of the Companies Act, 2013. Such power has never been delegated by the Board of PLL to MD & CEO i.e. respondent no.6. The H.R. Policies-Section 4-Standards of Conducts & Performance (SA/1) are outdated, inconsistent and at variance with the provision under section 178(2), 179(1) and 179(3) of the Companies Act, 2013. Thus, the approval of charge-sheet by MD & CEO i.e. respondent No.6 is illegal & bad in law as he has no authority of disciplinary action against the petitioner under provision of the Companies Act, 2013. Therefore, approval of charge-sheet by MD & CEO is null &void and non-est in the eyes of law.

28. In the case of ***M/s Sahani Silk Mills (P) Ltd & Ors vs. ESI***

Corporation: AIR 1994 SCW 3832, it is held as below;

> *"6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place."*

29. Reliance is also placed on ***Government of Andhra Pradesh vs. M.A. Majeed & Anr.: 2006 (2) AIR Kar R 443*** and submitted that a statutory authority is required to do something in a particular manner, the same must be done in that manner only. The state and other authorities, while acting under the statute, are the creatures of the statue and they must act within the four corners of the statute.

30. In the case of ***A K Kraipak vs. Union of India: (1969) 2 SCC 262,*** the Supreme Court has held as under:

> ***"****The concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the Inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a*

> *complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that enquiries must be held in good faith and without bias, and not arbitrarily or unreasonably, is now included among the principles of natural justice."*

31. Learned counsel for the petitioner corroborated from the submissions made under para 3 (i) to (xii) mentioned above and the judgements mentioned above that the charge-sheet dated 21.8.2018, which does not have the approval of disciplinary authority (Board of PLL) is without jurisdiction, illegal, bad in law and non-est and deserves to be quashed. Moreover, the constitution of committee does not have the approval of Board of PLL being the disciplinary authority and therefore, it is illegal and without jurisdiction.

32. To strengthen his argument, counsel for the petitioner has relied upon the case of ***Union of India and Ors. vs. Mohd Nasseem Siddiqui ILLJ: (2005) 931 MP***, of Madhya Pradesh High Court, which is held as under:

> *"7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognised facets: (i) The adjudicator shall be impartial and free from bias, (ii) The adjudicator shall not be the prosecutor, (iii) The complainant shall not be an adjudicator, (iv) A witness cannot be the Adjudicator, (v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges, (vi) The Adjudicator shall*

> *not decide on the dictates of his Superiors or others, (vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations. If any one of these fundamental rules is breached, the will be vitiated."*

33. In ***State of U.P. & Ors vs. Saroj Kumar Sinha: AIR 2010 SC 3131***, the Hon'ble Supreme Court of India in paragraph 26 and 28 has held as under:

> *"26. Inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved."*
>
> *"28. When a department Inquiry is conducted against the Government servant it cannot be treated as a casual exercise. The Inquiry proceedings also cannot be conducted with a closed mind. The Inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done."*

34. In the case of ***E. Busali v. The commandant, FLR: 1994 (68) Kar. HC. 993*** it is held that "*Inquiry conducted by a subordinate's officer of the complainant would be vitiated on the account of bias. The court held that in their view the learned Single Judge ought to have accepted the contention of*

the writ petitioner that the Inquiry officer, being a subordinate officer to the complainant, the entire proceedings relating to were vitiated."

35. The Hon'ble Supreme Court in the case of ***State of Punjab vs. V.K. Khanna & Ors: AIR 2001 SC 343*** has held that when administrative actions are coloured with bias and malice, the courts are within their jurisdiction to quash the charge sheets. The court has also held that the existence of elements of bias depends on the facts and circumstance of each case and can be judged from the surrounding circumstances of the case. The court has held as under:

> *"8. The test. therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained: If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor would not arise."*

36. It is submitted that appointment of Shri V.K. Mishra, who is a subordinate of the complainant (respondent No.6), as member of committee is in utter violation of principles of natural justice and court judgements mentioned above and vitiates the disciplinary proceedings. From the submissions mentioned above, it is substantiated that the committee has

been constituted arbitrarily, unreasonably and colours with bias and, therefore, deserves to be quashed.

37. On the issue of findings of Committee, it is submitted by counsel for the petitioner that the petitioner has written several letters through e-mail informing respondents that his disciplinary authority is Board of PLL and charge sheet issued to him without approval of Board of PLL is wrong and illegal. However, all the representations of the petitioner were ignored by the respondents. Petitioner was, therefore, compelled not to represent on the findings of the committee.

38. As regards charge no.1 is concerned, it is submitted that a confidential letter dated 01.05.2018 (P/2), written by the petitioner to Shri K.D. Tripathi, Secretary, MOPNG with a copy to CVC and Director CBI, wherein, he made false allegation. Thus, the allegation against the petitioner is highly sensitive and confidential information is disclosed into public domain by writing that letter which amounts to misconduct under H.R. Policy of PLL.

39. The findings of the Inquiry Committee (EC) as recorded under para 5.6, 5.7 and 8 of the EC report dated 18.12.2018 (P/9) are reproduced below;

> *"5.6 In the opinion of EC, all these authorities (except Secretary, MOPNG and Chairman PLL) are public functionaries of the country and any communication*

> *addressed to them amounts to putting the communication into public domain."*
> *"5.7 Disclosure of the confidential information relating to the tender process as contained in the letter dated 01.05.2018 clearly amount to "disclosing into public domain" and hence violation of secrecy and confidentiality of the said information relating to tender processes."*
> *"5.8 The said acts/omissions clearly amount to misconduct under clauses 4.3.1(o) and 4.3.1 (m) of General Standards of Conduct and Performance."*

40. The conclusion arrived at by the EC under para 5.6, 5.7 &8 of its reports is not based on evidence adduced during the Inquiry but on conjecture. The opening words of para 5.6 viz "*In the opinion of EC, all these authorities* ...." itself that conclusion is arrived at on conjecture by importing personal knowledge by the Inquiry Committee and is tainted with bias. Writing confidential letter to CVC and CBI Director cannot be said to be disclosing information under public domain. If information is disclosed to the press, newspapers, electronic media etc. for information of public at large then it would be in public domain. Inquiry Committee has failed to establish if any prejudice is caused or if any harm is done to PLL by writing confidential letter dated 01.05.2018 by the petitioner to CVC or CBI Director. In the contents of the letter dated 01.05.2018, there is nothing like

"*highly confidential and sensitive*" as termed by respondent No.6 deliberately. As such charge no.1 is wrongly proved against the petitioner.

41. As far as charge no.2 is concerned, it is submitted that a complaint letter dated 02.07.2018 (P/3) and its enclosure approval note dated 01.06.2018 (P/21) written by the petitioner to Dr. M.M. Kutty, Secretary, Ministry of Petroleum and Natural Gas and copy sent to other various government authorities. Accordingly, the allegation against the petitioner is that the approval note neither belongs to the department of the petitioner nor its possession thereof belongs to the work domain of petitioner and that petitioner unauthorisedly got access to the approval note and communicated to various public authorities and thus misconduct. The findings of the Inquiry committee (EC) report as recorded under paragraph 15 of the EC report dated 18.12.2018 are reproduced below:

> *"15 EC also finds that sharing of approval note amounts to unauthorised communication / disclosure of official document/information relating to the Company's business to unrelated persons and wilful damage to the property of the company and the same are misconduct under clause 4.3.1(m) and (o) of the H.R. Policy on Standards of Conduct and Performance."*

42. The petitioner being a "*Whistle Blower*", blew a whistle by lodging a compliant dated 02.07.2018 under "*Public Interest Disclosure and*

Protection of Informs" Resolution 2004 exposing corruption of respondent No. 6 by misusing office. The petitioner enclosed approval note dated 01.06.2018, with compliant dated 02.07.2018, as documentary evidence in support of his allegation against respondent No.6. From the complaint it is clear that respondent no.6 awarded a work order of Rs. 55.00 lakh to a already disqualified firm M/s Pine Tree Pictures (P) Ltd, on nomination basis in utter violation of company's laid down procedure. The director of M/s Pine Tree Picture Pvt. Ltd. Shri Gautam Chaturvedi, is a family friend of respondent No.6. Respondent No. 6 approved 75% advance payment without any bank guarantee in gross violations of rules and regulations.

43. As regards charge no.3 is concerned, it is as per clause 17.4.2 of HR policies that the petitioner is entitled for one club membership. Accordingly petitioner acquired membership of Chelmsford Club in Delhi. The charge against the petitioner is that he is entitled for corporate membership club and that he acquired individual membership of the Chelmsford club by misrepresenting the facts and thus misconducted. The findings of the Inquiry committee (EC) as recorded under paragraph 1, 6 and 7 are reproduced below;

> *"1. A perusal of club membership policy (P/1) shows that the Management provides one club membership to V.P. and above."*
> *"6. Therefore, in the opinion of EC, the club policy of the company only refers to the Corporate Membership which is in favour of the Company and any eligible employee is required to be nominated by the Company under the said membership."*
> *". It is clear that CSE was entitled only to a Corporate Club Membership and he fraudulently obtained an individual and permanent membership in his own name, which is not transferable under the Rules of Chelmsford club, as it is evident from their letter (Ex.MW-1/5)."*

44. Learned counsel for the petitioner submits that as per clause 17.4.2 of H.R. policies, the company shall provide one club membership to V.P and above as admitted by EC under paragraph 1 of its report. It does not mention corporate club membership. The conclusion is arrived at by the EC, under paragraph6 mentioned above, by importing personal knowledge and is tainted with bias. It is as well in utter violation of provision under clause 17.4.2 of H.R. policies.

45. It is pertinent to mention here that Shri A.K Chopra, Senior Vice President (L&D) is also having same type of membership of Chelmsford club as the petitioner, as would be evident from PLL's letter no PLL/HR-CM-CC/2018-19/002 dated 4th July 2018, copy annexed as P-24). Although petitioner has been charge sheeted on 21.8.2018 for allegedly having wrong

membership of the club but no charge sheet has been issued to Shri A.K. Chopra along with petitioner. It is thus obvious that respondent No. 6 is not impartial and is biased & vindictive against the petitioner.

46. On the other hand, Mr. Sudhir Nandrajog, Senior Advocate appearing for respondent nos.4 to 6 submitted that the petitioner did not attend the committee proceedings inspite a number of chance given to him and, therefore, ex-parte was concluded. In this connection, petitioner submits as under:

i. In email dated 10.10.2018 (P/28) petitioner informed chairman PLL and others that Inquiry committee has been constituted without approval of chairman / Board of directors in violation of company act 2013 and that it would be illogical for the petitioner to attend the Inquiry committee.

ii. In email dated 12.10.2018 (P-29) petitioner informed respondent No.6 and others if approval of board of directors was obtained for setting up of the Inquiry committee. If so, a copy of the approval was sought by the petitioner from respondent No.6, which was not supplied.

iii. In email dated 29.10.2018 (P/30) petitioner informed that respondent No.6 has not furnished copy Board of director's approval for

constituting the Inquiry committee. Petitioner also informed that it would be illogical for petitioner to attend the unconstitutional Inquiry committee.

iv. In email dated 13.11.2018 (P/31) petitioner informed respondent No.6 that appointing authority of the petitioner is board of directors through NRC (Nomination & remuneration Committee) and that approval of board had not been obtained before proceeding. On bogus charge sheet and that in the absence of approval of board, charge sheet cannot be issued to the petitioner. Petitioner further informed that it would be illogical for petitioner to attend unconstitutional Inquiry committee.

47. Accordingly, the petitioner has attempted to establish that the entire disciplinary proceedings are unconstitutional, void, wrong and against the principles of natural Justice and in contravention of provision of Article 311 of the constitution of India. As such findings of the Committee are wrong, ultra vires and not impartial as the disciplinary proceedings are not held in good faith and without bias.

48. Learned Senior counsel submits that the present petition has been filed to challenge the Inquiry report of the Inquiry committee dated

18.12.2018 pursuant to a charge-sheet dated 21.08.2018. The writ had been filed at the stage when the Inquiry report dated 18.12.2018 was sent to the petitioner vide letter dated 24.12.2018 and one weeks' time was granted to him to make the representation. Therefore, at his request, vide letter dated 04.01.2019 he was granted further extension to submit his representation against the report by 11.01.2019, however, instead of making the representation, the petitioner filed the present writ petition challenging the Inquiry report as well as charge-sheet.

49. Learned counsel further submits that main challenge of the petitioner is that; the charge-sheet has been issued by an incompetent authority as it has been issued by the Senior Manager HR; under Section 178 of the Companies Act, 2013 the appointing authority of the petitioner is the Board of Directors; since the approval of the Board of Directors was not obtained the charge-sheet is liable to be quashed and finding of guilt by Inquiry committee on the allegedly incompetent charges is violative of principles of natural justices.

50. Learned Senior Advocate submits that the petitioner was issued a charge sheet dated 21.08.2018. It was sent through his reporting officer i.e. Director (Technical) and was communicated by Senior Manager HR. It was

duly approved by the MD & CEO of PLL as stated below. The initiation of disciplinary proceedings is in accordance with the applicable rules of the company, including delegation of authority Manual, HR policy amended from time to time, and is also not in variance with the Companies Act 2013 and rules thereof. As per clause 4.14 of the DOA Manual, powers pertaining to HR vests with the MD & CEO in consultation with the Head of the HR Department. Clause 4.14 of DOA Manuals is reproduced as under:-

> *"4.14 Powers pertaining to HR will be exercised by CEO & MD in consultation with the head of the HR Department"*

51. As per clause 4.4.3.6 of the HR Policy the competent authority (CA) towards disciplinary action and purpose of punishment is CEO & MD for the officers and directors concerned for the operational and supporting staff…." Relevant clause 4.4.3.6 is reproduced as under :-

> *"4.4.3.6 The competent authority (CA) towards disciplinary action and purpose of punishment is CEO & MD for officers and directors concerned for the operational and supporting staff....."*

52. Section 4 of the standard of conducts and performance of the HR Policy (PLL) which is duly approved by the Board of Directors and applicable on the employees including the petitioner clearly lays down the process to be followed by HR department in consultation with the functional

head and the MD & CEO for any action including disciplinary proceedings against a delinquent employee and powers of the MD & CEO (respondent No. 6). The relevant clauses are extracted below :-

> *"4.4.3 If any act of misconduct is proved against an employee any of the following punishments, commensurate with the offence can be inflicted.*
>
> - *Fine.*
> - *Warning or censure.*
> - *Stoppage not exceeding four days*
> - *Reduction to a lower grade or lower stage in the grade*
> - *Discharge or dismissal*
>
> *In the case of misconduct for which any of the above penalties other than the fine is proposed to be imposed, a chargesheet clearly setting out the allegations and charges, will be given to the employee concerned. He will within 7 days from the date of the receipt of said communication furnish his written explanation. An enquiry will be held by an Enquiry Committee nominated by the Management of the Company into the Competent Authority to drop the alleged charges arid the facts so communicated to the employee in writing. During the enquiry the employee concerned will be afforded reasonable opportunity of explaining and defending himself. The Enquiry Committee will establish the truth or otherwise of the charges and present its findings to the competent authority, which after due consideration of all relevant facts, will decide the action to be taken. In the event it is decided by the competent authority that employee is innocent, this fact will be so communicated to him in writing. If, however, the competent authority finds the employee to be guilty of some or all the charges and therefore decides to inflict punishment on him, a show cause notice will be issued to the employee concerned, informing the employee as to show cause within 7 days from the date of receipt of the communication by him as*

> *to why the proposed penalty should not be imposed on him. The reply to the show cause notice will then be considered by the competent authority and final orders communicated to the employee."*

53. Hence it is evident that the MD and CEO is the competent authority and has full power for initiation of disciplinary action against any officer of PLL.

54. Relevant extracts of Section 178 of the Companies Act, 2013 are as follows:

> ***"178. Nomination and Remuneration committee and stakeholders Relationship committee.***
> *(1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and remuneration committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:*
> *Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and remuneration committee but shall not chair such committee…."*
>
> *(2) The nomination and remuneration committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the board their appointment and removal and shall carry out evaluation of every director's performance…."*

55. It is thus clear that in view of section 178, if any penalty of removal is imposed then the procedure prescribed under section 178 of the Companies

Act, 2013 would be required to be followed. However, for minor and other penalties not envisaged under Companies Act 2013, the MD and CEO would be the competent authority. Hence if any punishment is awarded other than 4.4.3 (e) and (f) of standards of conducts and performance of the HR Policy, MD& CEO is the competent authority. If the punishment falls under 4.4.3 (e) and (f) of standards of conducts and performance of the HR Policy, then the MD & CEO will forward the case to the NRC under section 178 of the Companies Act, 2013, since any removal or demotion of senior management personnel category should be recommended to the board by the NRC. However, section 178 has no role to play with respect to the initiation of the disciplinary proceedings. It will come into picture only at the time of imposition of penalty. The MD &CEO is clearly empowered and authorized under the delegation of authority as well as the standards of conducts and performance of the HR Policy (PLL) to initiate the disciplinary proceedings including the issuance of the charge sheet and the appointment of the Inquiry Committee. The original file showing that the MD &CEO has approved the issuance of the charge sheet has been perused by this Court during the hearing on 02.07.2019.

56. I have heard learned counsel for the parties at length and perused the

material available on record.

57. Regarding maintainability of the petition is concerned, respondent company is '*Public Limited Company*' as per section "*4-Memorandum-(1)*" of Companies Act, 2003. The company was formed as a joint venture company by Government of India in 1998 in pursuance of Cabinet decision on 04.07.1997. Thus, it is an instrumentality of Government because it comes under purview of "*other authorities*" of "*State*" under Article 12 of the Constitution of India.

58. In addition, deep and pervasive control is exercised by Government over administrative, financial and functional activities of the respondent company. Moreover, there is significant financial control by 50% shareholding by four central Government PSUs mentioned above and it falls within the purview of CVC. Moreover, in case of Essar Steel Limited (Supra), the directive of Central Government to company under their letter dated 06.03.2007 was upheld by the Supreme Court of India on 19.04.2016. In case of Petronet LNG Limited (Supra), it is held by this court that there is crucial public interest element in its functioning and 50% of ₹1,200 crores shareholding is controlled by Public Sector Undertaking which are directly answerable to Central Government and Parliament. Thus, in my considered

opinion, the respondent company is 'State' under Article 12 of the Constitution of India. Accordingly, the present writ petition is maintainable.

59. It is admitted fact that the petitioner did not attend the committee proceedings inspite a number of chance given to him and, therefore, proceedings were concluded ex-parte. The case of the petitioner is that the entire disciplinary proceedings are unconstitutional, void, wrong and against the principles of natural Justice and in contravention of provision of Article 311 of the Constitution of India.

60. The challenge before this court is the Inquiry report of the Inquiry committee dated 18.12.2018 pursuant to a charge-sheet dated 21.08.2018. The present petition has been filed at the stage when the Inquiry report dated 18.12.2018 was sent to the petitioner vide letter dated 24.12.2018 and one weeks' time was granted to him to make the representation. It is not in dispute that, at his request, vide letter dated 04.01.2019 he was granted further time to submit his representation by 11.01.2019 against the representation. However, instead of making the representation, the petitioner filed the present writ petition challenging the Inquiry report as well as charge-sheet.

61. Further case of the petitioner is that the charge-sheet has been issued

by an incompetent authority as it has been issued by the Senior Manager HR; under Section 178 of the Companies Act, 2013 the appointing authority of the petitioner is the Board of Directors. Since the approval of the Board of Directors was not obtained, the charge-sheet is liable to be quashed and finding of guilt by Inquiry committee on the allegedly incompetent charges is violative of principles of natural justices.

62. The charge sheet dated 21.08.2018 was issued to the petitioner and the same was sent through his reporting officer i.e. Director (Technical) and was communicated by Senior Manager HR. It was duly approved by the MD & CEO of PLL. The initiation of disciplinary proceedings is in accordance with the applicable rules of the company, including delegation of authority Manual, HR policy amended from time to time and is also not in variance with the Companies Act 2013 and rules thereof.

63. As per clause 4.14 of the DOA Manual, the powers pertaining to HR vests with the MD & CEO in consultation with the Head of the HR Department. The said powers pertaining to HR will be exercised by CEO & MD in consultation with the head of the HR Department.

64. As per clause 4.4.3.6 of the HR Policy, the competent authority (CA) towards disciplinary action and purpose of punishment is CEO & MD for

the officers and directors concerned for the operational and supporting staff.

65. Section 4 of the standard of conducts and performance of the HR Policy (PLL) which is duly approved by the Board of Directors and applicable on the employees including the petitioner clearly lays down the process to be followed by HR department in consultation with the functional head and the MD & CEO for any action including disciplinary proceedings against a delinquent employee and powers of the MD & CEO (respondent No. 6). Thus, MD and CEO is the competent authority and has full power for initiation of disciplinary action against any officer of PLL.

66. As per section 178 of the Companies Act, 2013, if any penalty of removal is imposed then the procedure prescribed under section 178 would be required to be followed. However, for minor and other penalties not envisaged under Companies Act 2013, the MD and CEO would be the competent authority. Thus if any punishment is awarded other than 4.4.3 (e) and (f) of standards of conducts and performance of the HR Policy, MD& CEO is the competent authority. If the punishment falls under 4.4.3 (e) and (f), then the MD & CEO will forward the case to the NRC under section 178 of the Companies Act, 2013, since any removal or demotion of senior management personnel category should be recommended to the board by the

NRC. However, section 178 has no role to play with respect to the initiation of the disciplinary proceedings. It will come into picture only at the time of imposition of penalty. Thus, the MD & CEO is clearly empowered and authorized under the delegation of authority as well as the standards of conducts and performance of the HR Policy (PLL) to initiate the disciplinary proceedings including the issuance of the charge sheet and the appointment of the Inquiry Committee.

67. In addition to above, it is pertinent to mention here that during the hearing of the present petition, on 02.07.2019, this court has perused the original file whereby it is established that the MD & CEO has approved the issuance of the chargesheet. Thus, the arguments of the counsel for the petitioner and the ratio of the judgments relied upon, has no help in the facts and circumstances of the present case.

68. However, before parting with this judgment, it is the duty of the court that if any information regarding corrupt practices of any official including respondent no.6 is on record, then this court cannot lay hand.

69. Accordingly, Chief Vigilance Commissioner is directed to inquire into the allegations made by the petitioner against respondent no.6, mentioned in para 7 above, and take action as per law.

70. Since the petitioner has challenged the charge-sheet and inquiry proceedings and not filed response to the findings of Inquiry Authority, therefore, I hereby give liberty to file response within three weeks from the receipt of this order. On receipt of reply, the respondent is directed to consider the same and pass order as per law, dealing with the fact that Sh.A.K. Chopra, Senior Vice President is also having same type of membership of Chelmsford Club as the petitioner has, but no action has been taken against him.

71. In view of above directions, the writ petition is disposed of.

72. Registry is directed to send copy of this judgment to Chief Vigilance Commissioner for compliance.

CM APPL. Nos. 486/2019 & 14962/2019

73. In view of the order passed in the writ petition, these applications have been rendered infructuous and are, accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 20, 2019/ab