Kumaon Mandal Vikas Nigam Ltd vs Girja Shankar Pant & Ors on 18 October, 2000

Equivalent citations: AIR 2001 SUPREME COURT 24, 2001 (1) SCC 182, 2000 AIR SCW 3826, 2001 LAB. I. C. 11, 2000 ALL. L. J. 2816, 2001 (3) LRI 406, 2001 (1) COM LJ 22 SC, 2001 (2) UJ (SC) 1185, 2000 (2) JT (SUPP) 206, 2000 (9) SRJ 416, (2001) 1 COMLJ 22, (2000) 7 SCALE 19, (2000) 7 SUPREME 112, (2001) 2 MAHLR 151, (2001) 1 LABLJ 583, (2001) 1 ALL WC 83, (2001) 1 ESC 69, (2000) 4 SCJ 529, 2001 LABLR 1, (2000) 87 FACLR 877, (2000) 8 SERVLR 769, (2001) 1 CURLR 12, (2000) 4 LAB LN 1202, (2001) 1 SCT 607, (2001) 1 PAT LJR 47, 2001 SCC (L&S) 189

Author: U.C.Banerjee

Bench: U.C.Banerjee

PETITIONER:
KUMAON MANDAL VIKAS NIGAM LTD.

Vs.

RESPONDENT:
GIRJA SHANKAR PANT & ORS.

DATE OF JUDGMENT: 18/10/2000

BENCH:
G.B.Pattanaik, U.C.Banerjee

JUDGMENT:

BANERJEE,J.

L.....I.....T.....T.....T.....T.....T.....T..J Since the decision of this Court in Kraipaks case [A.K. Kraipak v. Union of India :1969 (2) SCC 262] one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v. Baldwin & Ors. (1964 Appeal Cases 40) very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances who then is a reasonable man the man on the clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin

(supra) in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even in the millennium year. As a matter of fact this Court in the case of Keshav Mills Co. Ltd. v. Union of India & Ors. [1973 (1) SCC 380] upon reliance on the attributes of the doctrine as above stated as below: 8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yard-stick in this manner. The concept of natural justice cannot be put into a straight jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in In re H.K. (an infant) (1967) 2 QB 617. It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin case (supra) as insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances. However, even the application of the concept of fair-play requires real flexibility. Every thing will depend on the actual facts and circumstances of a case. As Tucker, L.J. observed in Russell v. Duke of Norfolk (1949) 1 All ER 109:

> The requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject- matter that is being dealt with and so forth.
>
> While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Straight jacket formula cannot be made applicable but compliance of the doctrine is solely dependant upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance of the doctrine, the law courts in that event ought to set right the wrong inflicted upon the concerned person and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. Adverting to the factual aspect of the matter at this juncture, it appears that the respondent was appointed as a Stenographer in the year 1972 and was promoted to the post of Assistant Secretary in 1976 and subsequently to the post of Divisional Manager (Tourism) in the scale of Rs.1350-2100 with effect from 1st April, 1987 and thereafter designated as the General Manager (Tourism) undoubtedly a career worth noticing and it is this carrierist General Manager (Tourism) who alleges a definite malice of the Managing Director to the effect that events subsequent would unmistakably depict a state of mind which cannot but be attributed to be of malicious intent. The events so relied upon are as below:

> (a) by an order dated 28th September, 1993 the powers of the petitioner as the General Manager were withdrawn: (b) a show-cause notice was served on 1st October, 1993 requiring his explanation by 19th October, 1993 with a direction to appear on 20th October, 1993: (c) the appointment of the Inquiry Officer in terms of the order dated 12th October, 1993: (d) the issuance of the order of termination: It is on this factual backdrop that the respondent employee made a definite assertion of non-compliance of the doctrine of natural justice and bias. As noticed above the respondent was served with a show- cause notice containing about 13 allegations without however any documentary support in regard thereto copies of the documents were asked for but the same were not made available. Persistent reminder on that score though yielded the benefit of having an inspection of some of the documents in the office, but a number of other documents were not made available to the delinquent employee even for inspection on the plea that the same were already placed before the Inquiry Officer.

Non-submission of the copy of the documents or even an inspection thereof has in fact said to have made it impossible for the Respondent herein, to send an effective reply to the show-cause notice. The situation therefore shortly put thus remains that even though a show-cause notice was served but by reason of the factum of non-availability of the documents to the respondent herein, the show-cause notice could not be answered in any effective manner at all excepting however in a rough and ready manner so as to avoid the comment and criticism of acceptance of the charge. The factual score depicts that the Inquiry Officer however on supposed examination of the records and admittedly without giving any notice and without fixation of any date or time or any venue for the inquiry or for examination or cross-examination of the witnesses and upon purported consideration of the so-called reply of the respondent herein as noticed above, proceeded to complete the inquiry. Even no Presenting Officer was appointed and as a matter of fact the report itself says that the Inquiry Officer dealt with the matter himself without any assistance whatsoever. It is significant to note at this juncture that a large number of letters were sent to the concerned authority by the respondent with a fervent prayer for inspection so as to enable the respondent to send an effective reply to the show-cause notice, but the same was denied to the respondent. Shortly the situation thus runs out in the manner following: (i)(a) A show-cause notice was sent; (b) Since no documentary evidence was available a rough reply was sent as against the show-cause notice and the entire inquiry proceeding was based thereon; (ii) No charge sheet was given; (iii) No explanation was sought for by the Inquiry Officer (iv) No oral evidence was taken thus question of any cross-examination would not arise (v) No date , time and place was fixed by the Inquiry Officer for hearing of the matter (vi) No Presentation Officer was appointed. -and it is on the basis of situations as above the enquiry stood complete. Subsequent factual situation is also interestingly illustrative and runs as below: (i) Copy of the enquiry report was sent to the respondent on 9th November, 1993 with a request to give a reply thereto positively on 10th November, 1993 at 10.30 a.m. (ii) The respondent was directed to produce his defence at 11.00 a.m. on the same day without however, permission to summon his defence witnesses. (iii) Subsequently personal hearing was offered on 22nd November, 1993 but by reason of the non-availability of the Managing Director, the date for personal hearing was rescheduled from 22nd to 25th November, 1993, but no hearing could take place on 25th November, 1993 either. (iv) On 26th November, 1993 the Managing Director informed

the respondent to be present before him on 26th November itself at 4.00 p.m. and on 26th November itself an eighteen page order was passed dismissing the respondent from services at about 7.30 p.m. It is on this factual backdrop that the matter was taken before the High Court under Article 226 of the Constitution wherein upon due consideration of the factual matrix, the order of dismissal was set aside on the ground of being prejudicial, thus resulting in total miscarriage of justice and hence the appeal before this Court by the grant of special leave. Before adverting to the rival contentions, be it noted that the matter in question involves two principal issues: (a) the issue of bias and malice and (b) the issue of natural justice. Admittedly, the points in issue would over-lap each other while detailing the same, but the facts, as hereinafter noticed, are such that the same is otherwise unavoidable. The word Bias in popular English parlance stands included within the attributes and broader purview of the word malice, which in common acceptation mean and imply spite or ill-will (Strouds Judicial Dictionary (5th Ed.)Volume 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record o come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice. While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal enquiries, intention, as distinguished from motive is the all-important factor. In common parlance, a malicious act has been equated with intentional act without just cause or excuse (see in this context Jones Bros. (Hunstanton) v. Steven: 1955 (1) Q.B. 275). The respondent on this score referred to the show-cause notice and contended that there was in fact a total mind-set from the beginning for punishing the respondent by way of an order of dismissal from service and as such no further material evidence need be produced in the matter on the wake of available cogent evidence of bias and prejudice. It is on this score that relevant abstracts of show-cause notice may be of some assistance and as such the same is set out rather extensively herein below for proper appreciation:-

> While going through the profit and loss account of the tourism section of the last seven years, it was observed that the section was in profit only in the year 1990-91 on account of LTC tours. But the section was in loss during the rest of the years, while you have been informing me that the section is in profit except for the depreciation. Reality is just opposite to it.
>
> Timely payment was not made to the LTC agent during the year 1990-91 resulting the closure of the LTC tours thereafter. Clearly, the LTC tours were not organised properly. Had the LTC tours continued, there was no chance of tourism section running in loss. ..
>
> Kailash Mansarover Yatra could not fetch so much profit as it should on account of non- control over the expenditure. During the year 1992 the profit in this yatra was approximately Rs.13 thousand, while during the previous years it used tobe between 1.50 to 2.0 lakhs. While you informed me that the profit during 1992 will be approximately the same as of last years.
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> .

A sum of Rs.2.70 lakhs was advanced to Messers Elgin Mills during the year 1990-91, 91- 92 for the purchase items, out of which the firm supplied items costing Rs.1.91 lakh only. Thus, there is balance of Rs.0.79 lakh with the firm for the last 2-3 years. No specific action was taken to get back the money or items from the firm. Thus, on one hand the Nigam suffered loss on interest and in the same time it resulted reduction in the working capital.

Being the head of the department of the tourism section, it was your responsibility to submit before the purchase committee and the Managing Director the cost and the quantity of the furnishing items and accordingly action should have been taken to place the supply orders with the firms for the purchase of furnishing items. But it was not done so. In many cases, items have been purchased at much higher rates than sanctioned by the government for these.

No specific action was taken for the purchase of the items, inspite of being informed repeatedly to purchase these before the tourist season. Inspite of written repeated request by the Chairman of the purchase committee, no full details were made available of the items proposed to be purchased. The purchased committee had been to Delhi to purchase the items and only at that time the file was made available. The purchase committee, after market survey submitted its report. The concerned file was not traceable thereafter and after few days it was found in the almirah of section after thorough search. As such due to non-availability and delay in furnishing work it resulted thereon non-receipt of desired income during the tourist season.

On account of non-purchase of furnishing items well in time, Nigam started preparing the furniture itself. This resulted good quality of furniture and it is expected 30% cheaper in cost than the items purchased earlier. Clearly no attention was paid towards this.

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Approval to purchase soap at Rs.1.40 each was obtained for the supply of the same from a Bombay firm. Inspite of the knowledge of high prices, you recommended for the purchase of the soap required during the tourist season and have recommended that the soap bearing Nigams name shall have good impact on the tourists. On your recommendation instructions were issued to cancel the supply order in case of failing to supply the same within 15 days. Still the supply was not received within the fixed time. When it was pointed out that the rates are high, you placed supply order with the firm, under your own signatures, @ Rs.1.25 each. Thus, no attention was paid by you towards this, while seeking approval. Clearly, interest of the Nigam was not kept in mind.

It was not proper in the light of commercial and administrative reasons to post the managers of the tourist rest houses at one place for the many years. No action was

taken by you in this regard. Inspite of this, no action was taken to transfer the concerned managers committing financial irregularities. This cant be said to be in the interest of the Nigam.

Lastly, it is concluded that you never kept in mind the interest of the Nigam due to your personal vested interests. Due to your corrupt conduct, you had no control over your subordinates. You never submitted suggestion in the interest of the Nigam and never shown interest in the implementation of the schemes due to which the Nigam was unable to get the success as much as it should have, keeping in view the natural beauty of this place. The tourism section was suffering loss due to your activities. You always misused the Nigams tourism section for your personal vested interest and gains. Your conduct and integrity is highly doubtful.

Apart from the above, Nigam suffered heavy loss due to irregularities in many purchases/matters and are being considered separately. You failed to take specific action for getting the tourism section in profit. You did not run the tourism section smoothly. Therefore, you are not capable to remain in your post.

It is this show-cause notice, which later came to be termed to be the charge-sheet as well and which the High Court ascribed to be totally prejudicial and biased resulting in total miscarriage of justice. The respondent, writ petitioner on this score contended that, as a matter of fact, the charge-sheet (if the same can be termed to be so) is the aftermath of personal vendetta of the former Managing Director of the Corporation. The incident spoken of by the respondent though trivial but we do feel it proper to note the same since it has a definite bearing in the matter under discussion. In September, 1993, the former Managing Director of the Corporation left on an official business to Tibet. The private Respondent also was subsequently deputed to Tibet alongwith Director General of Tourism U.P. for which the U.P. Government provided a helicopter upto Indian Border and it is this journey by helicopter which the Managing Director had to undergo on foot upto Indian border. It has been stated that this trek had its due effect and the writ petitioner was served with the show-cause notice cum charge-sheet culminating into an order of dismissal. The records depict that the Managing Director returned to the Head Quarter at Nainital on 27th September, 1993 and on the very next day i.e. on 28th September, 1993, the Managing Director withdrew the duties of the General Manager (Tourism) by an Order No.4927/2.3. By another Order bearing No.4951/2.5 and having the same date i.e. 28th September, 1993, all financial and administrative powers delegated earlier was withdrawn with immediate effect and the third event on this score is the issuance of the show-cause notice

-cum- charge-sheet on 1st October, 1993 having 13 allegations, relevant extracts of which have already been noticed herein before. Certain factual aspects on this score ought also to be noticed viz. that prior to the receipt of an explanation, the General Manager, Kumaon Anusuchit Janjati Vikas Nigam was appointed as an Inquiry

Officer by or at the instance of the Managing Director. Incidentally, Anusuchit Janjati Vikas Nigam is an unit of Kumaon Mandal Vikas Nigam having a common Managing Director and as such admittedly, the Inquiry Officer was under the direct supervision of the Managing Director. The factual score further depicts that on 15th October, 1993, the respondent herein asked for certain documents to submit his explanation and as such prayed for an extension of time upto 30th October, 1993. Subsequently, there was a reminder for the same by the respondents letter dated 25th October, 1993. On the same date the respondent, however, was granted extension of time upto 30th October, 1993 with a note that the records may be inspected in the office where all the files and records are available. In fact, however, the Departmental Clerk supposed to be incharge of the records did not produce the same on the ground of non-availability. The factum of petitioners inability to inspect the documents by reason of non-availability had been made known to Managing Director by a letter duly received at the office of the Managing Director but surprisingly however to no effective consequence since only a copy of the Profit & Loss Account for few centres and for only 2-3 years was made available which was not at all sufficient to submit a comprehensive and effective reply to the show cause notice. It is on this factual backdrop that the inquiry proceeded and on 6th November, 1993 the Inquiry Officer submitted a Report consisting of sixty-five pages to the Managing Director. The factual score further depict that that by letter dated 8/9.11.1993, the Managing Director intimated that the inquiry was conducted by Shri NK Arya, General Manager, Kumaon Anusuchit Janjati Nigam on the basis of the reply as sent on 30th October, 1993 and he has already submitted the report. As a matter of fact a copy thereof was also forwarded to the petitioner. The Managing Director, however, made it known that the records can again be seen in his chamber at 5.00 P.M. on 9.11.93. The last paragraph of the letter seem to be of some significance, as such the same is quoted herein below: Keeping in view the humanitarian point of view and your application, today, all the records are again being shown to you. There are serious charges of irregularities against you. Therefore, in the interest of Nigam and public interest it will not be possible to further extend the time for hearing. After going through the records, if you wish to submit additional representation, you can do so by 10.30 A.M. on 10.11.93 and for personal hearing present yourself on 10.11.93 at 11.00 A.M. in the office of the undersigned and can argue with the officers of the Nigam. After this no further extension of time will be possible. Apart from above, it is also to inform you that if you fail to appear for personal hearing at the appropriate time and date, it will be presumed that you have nothing to say and accordingly ex-parte action will be taken.

On final analysis of the admitted set of facts, thus the following situations emerge: (i) All the powers and authority enjoyed by the General Manager (Tourism) stood withdrawn by the order of the Managing Director; (ii) A show-cause notice, which subsequently came to be recognised as charge-sheet was issued containing 13 several charges;

(iii) Respondents repeated request for supply of documents went unheeded and when ordered inspection, the same not been given effect to, on the plea of non-availability of records;

(iv) Prior to the receipt of a proper and complete reply to the charge-sheet, the Managing Director of a sister organisation which happens to be a unit of Kumaon Mandal Vikas Nigam and thus a close associate and a subordinate to the Managing Director came to be appointed as the Inquiry Officer. (v) The Inquiry Officer furnishes a report on the basis of the chargesheet and the relevant records without there being any Presenting Officer and without affording an opportunity of hearing or even allowing any defence witnesses and not allowing the respondent to cross-examine any of the officers of the Nigam in spite of specific request to that effect; (vi) After receipt of the Inquiry Report on 9th November, 1993 on humanitarian consideration a further opportunity of hearing was given on the very next day at 10.30 A.M. with a rider attached thereto that no further time can possibly be allowed for any hearing in the matter. The chain of events as noticed above, however, does not indicate a very fair procedure but the subsequent factual score tops it all. The facts being: (a) The hearing date was re-scheduled on 25th November, by reason of the non-availability of the Managing Director but the documents were supposed to be made available for inspection in office In fact however there was never any attempt even to offer inspection and efforts in that regard on the part of the Respondent went totally unheeded; (b) No hearing however, took place on 25.11.93 instead the respondent was informed at his residence to present himself before the Managing Director at 4.00 P.M. on 26.11.93 in spite of the factum of the respondent being on Casual Leave on that day.

(c) The Managing Director passes an order consisting of eighteen pages which was delivered at the residence of the Respondent by about 7.30P.M. on the self-same day i.e. 26th November, 1993. It is on this score that strenuous submission has been made that when the personal hearing is fixed at 4.00 P.M., an eighteen page order of termination cannot possibly be made ready for service at 7.30 P.M. at the residence of an officer. We do find some justification in this submission it is rather in a very hot haste: This haste however, embraces within itself a series of questions and to pose and note a few: Is it administrative efficiency or reflection of the definite bent of mind or personal vendetta. The Respondent argues to be vendetta whereas the Appellant ascribes it to be nothing unusual about it. The High Court however, stated the following: Since the respondent No.2 has initially made up his mind to dispense with the services of the petitioner the subsequent appointment of inquiry officer or asking for the explanation of the petitioner, carry little weight. The respondent in the present case has acted in a most arbitrary manner and has thus, failed to discharge his obligations as the disciplinary authority. The orders passed by the Managing Director suffer from apparent prejudice and the same have been passed in contravention of the principles of natural justice. The respondents failed to discharge his functions in an objective independent, just and in equitable manner.

The impugned order of dismissal suffers from serious infirmities and the dismissal order cannot be upheld. We have no option but to quash the dismissal order in question.

While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-neigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above however do find some support from the decision of this Court in the case of Apparel Export Promotion Council v. A.K. Chopra (1999 (1) SCC 759). It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependant upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste: this is however, apart from the issue of bias which would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of Sayeedur Rehman v. The State of Bihar & Ors. (1973 (3) SCC 333) seem to be rather apposite. This Court observed: The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated April 22, 1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

Incidentally, Hidyatullah, C.J. in Channabasappa Basappa Happali v. The State of Mysore (AIR 1972 SC 32) recorded the need of compliance of certain requirements in a departmental enquiry at an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence on this state of law a simple question arises in the contextual facts: Has this being complied with? The answer however on the factual score is an emphatic no. The sixty-five page Report has been sent to the Managing Director of the Nigam against the Petitioner recording therein that the charges against him stand proved what is the basis? Was the Inquiry Officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative: If the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish Report. But if one does not have it - Can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our

concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the Kings Bench Division in the case of Denby (William) and Sons Limited v. Minister of Health (1936 (1) K.B. 337) may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state: I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Ministers discretion, and I think what was said by Lord Halsbury in Sharp v. Wakefield and others (1891 A.C. 173,

179) is important to consider with reference to the exercise of such discretion. He there said: Discretion means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : Rookes case (1598 5 Rep. 99b, 100a; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

Turning on to the issue of bias and for which the show cause notice-cum-charge-sheet has been set out in extenso, be it noted that the same does reflect a state of mind. Sufferance of loss on interest in so far as Nigam is concerned and resulting in reduction in working capital with total dereliction of duty has been specifically attributed to the Respondent herein. The inclusion of the last charge, however, clinches the issue, the same is set out herein below:

> Lastly, it is concluded that you never kept in mind the interest of the Nigam due to your personal vested interests. Due to your corrupt conduct, you had no control over your subordinates. You never submitted suggestion in the interest of the Nigam and never shown interest in the implementation of the schemes due to which the Nigam was unable to get the success as much as it should have, keeping in view the natural beauty of this place. The tourism section was suffering loss due to your activities. You always misused the Nigams tourism section for your personal vested interest and gains. Your conduct and integrity is highly doubtful.
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> The last paragraph of the last charge is also of some consequence as regards the bent of mind and the same is set out herein below:
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> Apart from the above, Nigam suffered heavy loss due to irregularities in many purchases/matters and are being considered separately. You failed to take specific action for getting the tourism section in profit. You did not run the tourism section smoothly. Therefore, you are not capable to remain in your post.

Upon consideration of the language in the show cause notice- cum-charge-sheet, it has been very strongly contended that it is clear that the officer concerned has a mind-set even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete. Bias in common English parlance mean and imply pre- disposition or prejudice. The Managing Director admittedly, was not well disposed of towards the respondent herein by reason wherefor, the respondent was denuded of the financial power as also the administrative management of the department. It is the self

- same Managing Director who levels thirteen charges against respondent and is the person who appoints the Inquiry Officer, but affords a pretended hearing himself late in the afternoon on 26.11.93 and communicates the order of termination consisting of eighteen pages by early evening, the chain is complete: Prejudice apparent: Bias as stated stands proved.

The concept of Bias however has had a steady refinement with the changing structure of the society: Modernisation of the society, with the passage of time, has its due impact on the concept of Bias as well. Three decades ago this Court in S. Parthasarathi v. State of Andhra Pradesh (1974 (3) SCC 459) proceeded on the footing of real likelihood of bias and there was in fact a total unanimity on this score between the English and the Indian Courts.

Mathew, J. in Parthasarthis case observed: 16. The tests of real likelihood and reasonable suspicion are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others, etc. : (1968) 3 WLR 694 at 707). We should not, however, be understood to deny that the Court might with greater propriety apply the reasonable suspicion test in criminal or in proceedings analogous to criminal proceedings.

Lord Thankerton however in Franklin v. Minister of Town and Country Planning [(1948) AC 87] had this to state:

I could wish that the use of the word bias should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires for those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute.

Recently however, the English Courts have sounded a different note, though may not be substantial but the automatic disqualification theory rule stands to some extent diluted. The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. The House of Lords in the case of Reg. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No.2) [2000 (1) A.C. 119] observed:

..In civil litigation the matters in issue will normally have an economic impact; therefore a judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much if the judges decision will lead to the promotion of a cause in which the judge is involved together with one of the parties.

Lord Brown Wilkinson at page 136 of the report stated:

It is important not to overstate what is being decided. It was suggested in argument that a decision setting aside the order of 25 November 1998 would lead to a position where judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that, because of such involvement, a judge would be disqualified. That is not correct, The facts of this present case are exceptional, The critical elements are (1) that A.I. was a party to the appeal; (2) that A.I. was joined in order to argue for a particular result; (3) the judge was a director of a charity closely allied to A.I. and sharing, in this respect, A.I.'sobjects. Only in cases where a judge is taking an active role as trustee or director of a charity which is closely allied to and acting with a party to the litigation should a judge normally be concerned either to recuse himself or disclose the position to the parties. However, there may well be other exceptional cases in which the judge would be well advised to disclose a possible interest.

Lord Hutton also in Pinochets case (supra) observed:

there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public

confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation.

Incidentally in Locabail (Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.: 2000 Q.B. 451), the Court of Appeal upon a detail analysis of the oft cited decision in Reg. v. Gough [(1993) A.C. 646] together with the Dimes case, (3 House of Lords Cases 759): Pinochet case (supra), Australian High Courts decision in the case of re J.R.L., Ex parte C.J.L.: (1986 (161) CLR 342) as also the Federal Court in re Ebner (1999 (161) A.L.R. 557) and on the decision of the Constitutional Court of Sourth Africa in President of the Republic of South Africa v. South African Rugby Football Union (1999 (4) S.A. 147) stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided. It further observed:

By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such persons evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakuta v. Kelly (1989) 167 C.L.R. 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party witness , or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.

The Court of Appeal judgment in Locabail (supra) though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom - In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case (supra).

Having discussed the issue as above in the contextual facts, we do feel it expedient to record that the action of the Managing Director in the matter of withdrawal of authority as noticed above and subsequent introduction of charges, in particular, the last of the charges as noted above and the further factum of issuance of an eighteen page letter of termination on the self same date and within a few hours after the pretended hearing was given, cannot but be ascribed to be wholly and totally biased.

On the wake of the aforesaid, we are unable to record our concurrence with the submissions of the appellant. The judgment under appeal, in our view, cannot be faulted in any way whatsoever. The Appeal, therefore, fails and is dismissed. There shall however be no order as to costs.