# Krishnadatt Awasthy vs State Of M.P on 29 January, 2025

## Author: Hrishikesh Roy

## Bench: Sudhanshu Dhulia, Hrishikesh Roy

2025 INSC 126 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4806 OF 2011

KRISHNADATT AWASTHY APPELLANT(S)

VERSUS

STATE OF M.P.. & ORS. RESPONDENT(S)

WITH CIVIL APPEAL NO. 4807 OF 2011 CIVIL APPEAL NO. 4808 OF 2011 CIVIL APPEAL NO. 4809 OF 2011 Hrishikesh Roy J

1. Heard Mr. Vivek Tankha, learned Senior Counsel appearing for the appellant. The respondents are represented by Ms. Mrinal Gopal Elker, learned counsel and Mr. Avdhesh Kumar Singh, learned counsel.

2. This matter is posted before this larger Bench on account of the split verdict rendered on 4.4.2024 by the two learned Judges of this Court. The case pertains to the validity of appointments made for the post of school teachers (Shiksha Karmi Grade III) in Janpad Panchayat, Gaurihar in the year 1998. Four Civil 1 of 44 Appeals were filed before this Court by ten persons, who are alleged to be the relatives of the members of the selection committee and were placed in the final select list of 249 Shiksha Karmis.

3. While Justice JK Maheshwari upheld the finding to set aside the selection of Shiksha Karmis on account of the violation of the first limb of the principle of natural justice i.e. rule against bias, Justice KV Vishwanathan has however upheld the selection, citing inter alia, a breach of the right to a fair hearing. Therefore, in this case, we are confronted with a conflict between the two foundational principles of natural justice i.e. rule against bias (nemo judex in causa sua) and the right to a fair hearing (audi alteram partem).

I. RELEVANT FACTS

4. Initially, one Kunwar Vijay Bahadur Singh Bundela challenged the preparation of the select list by filing an appeal before the Collector, District Chhatarpur, who quashed the select list, vide order dated 31.8.1998 and remitted the matter for fresh consideration. Thereafter, a fresh select list

consisting of 249 candidates including the names of appellants (and four others) was published on 16.9.1998 and the appointment order was issued on 17.9.1998. The selection and appointment of the appellants was challenged by an unsuccessful candidate-

2 of 44 Archana Mishra (Respondent No. 4 herein), before the Collector, District Chatarpur, Madhya Pradesh, under Section 3 of Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995(for short "Appeal and Revision Rules,1995) alleging that elements of nepotism, corruption and bias have seeped into the selection process because of the composition of the selection committee. The Collector, accepting the challenger's contention vide order dated 02.06.1999, set aside the appellants' appointment by concluding that the recruitment was vitiated on account of bias and nepotism. The Collector found fault with the composition of the selection committee, some of whom were the family members of the appellants herein and opined that the award of marks in the selection, was improper. Relying on Section 40(c) and Section 100 of Panchayat Raj Act Avam Gram Swaraj Adhiniyam, 1993 (for short "Adhiniyam, 1993), it was noted that office bearers cannot facilitate financial gains to relatives. The Collector further noted that:

> ' ...it is proved that the appointment of these relatives could not be deemed to be according to the prescribed procedure and the scheme and therefore, it is not necessary to call them up'.
>
> 5. Relying on the MP High Court's judgment in Hira Lal Patel v Chief Executive Officer, District Panchayat, Sarangarh 1, the (1998) 2 MP WN 39 3 of 44 Collector without issuing notice to the selectees observed that if the appointment is not made as per the scheme, it can be terminated without giving any opportunity of hearing.

6. Aggrieved by the above interference with the selection, the appellants filed a Revision petition before the Commissioner, Revenue, Sagar Division under section 5 of the Appeal and Revision Rules,1995. The selectees contended therein that without arraying them and without affording them any hearing, the Collector could not have interfered with the selection and this would be in violation of the principles of natural justice. The Revision Petition was however dismissed by the Commissioner vide order dated 14.3.2000. In the said order the Commissioner observed in para (6) that the selection is contrary to Section 40(C) of the Adhiniyam, 1993. The Revisional Authority brushed aside the plea of non-joinder and of not affording opportunity of hearing, by relying on the admission of the relationship of the appellants with the members of the selection committee, as noted in the reply filed by the Chief Executive Officer. Aggrieved by the order of the Commissioner, the appointees filed a writ petition under Article 226 of the Constitution of India before the Madhya Pradesh High Court which was however dismissed by the learned single judge vide order dated 31.7.2008. Relying on State Bank of 4 of 44 Patiala v SK Sharma2, it was observed that the opportunity of hearing has to be tested on the touchstone of actual prejudice being caused to the writ petitioners. It was also noted that full opportunity of hearing was granted at the Revisional stage by the Commissioner. According to the learned Judge the Chief Executive officer's reply established that few selectees were relatives of Smt. Pushpa Dwivedi(Chairperson of the selection Committee) and similarly, close relatives of Shri Swami Singh(member of the Education Committee) such as his sister- in-law, son, daughter-in-law and nephew were also among the selected

candidates. The Single Judge relied on the five-judge bench decision of this Court in AK Kraipak v Union of India3(for short "AK Kraipak") where it was emphasized that the presence of interested parties in the selection committee creates a reasonable likelihood of bias, even if direct participation is limited. It was therefore concluded that even though Smt. Pushpa Dwivedi(Chairperson) and Swami Singh(member) recused themselves during interviews of their alleged relatives, their presence on the committee could have influenced the overall selection process.

1996 (3) SCC 364 1969 (2) SCC 262 5 of 44

7. The appellants then preferred a writ appeal which was dismissed by the Division bench of the High Court on 15.12.2008. The Division Bench noted inter alia that:

> 'though it was imperative on the part of appellants to implead the affected parties, yet as the affected parties had been given full opportunity from all aspects by the revisional forum as well as by the Learned Single Judge, we do not think it apt and apposite to quash the order and remand the matter to the Collector'.
>
> 8. Relying on decisions of this Court on bias4, the Division Bench observed that bias is a state of mind at work and when the degree of relationship is in quite proximity, bias has to be inferred.
>
> 9. Thereafter when the matter reached the Supreme Court, Justice KV Vishwanathan concluded that the selection of appellants was erroneously set aside, in breach of the principle of audi alteram partem. It was further held that the principle must be adhered to at the original stage. Furthermore, Rule 9 of the Appeal and Revision Rules, 1995 was not complied with.

It was also observed that the orders of the Collector & Commissioner made no reference either to definition of 'relative' in explanation to Section 40(c) of Adhiniyam nor to the A.K. Kraipak v Union of India (1969) 2 SCC 262; J. Mohapatra & Co. v. State of Orissa, (1984) 4 SCC 103, Ashok Kumar Yadav v. State of Haryana, (1985) 4 SCC 417, Kirti Deshmankar v. Union of India, (1991) 1 SCC 104, Gurdip Singh v. State of Punjab, (1997) 10 SCC 641, Utkal University v. Nrusingha Charan Sarangi, (1999) 2 SCC 193, G.N. Nayak v. Goa University, (2002) 2 SCC 712, Govt. of T.N. v. Munuswamy Mudaliar, 1988 Supp SCC 651 : AIR 1988 SC 2232, Bihar State Mineral Development Corporation v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418.

6 of 44 resolution providing for recusal. Non-impleadment of parties amounted to 'no opportunity at all' for hearing was the conclusion reached by Justice KV Vishwanathan.

10. On the other hand, Justice J.K. Maheshwari upheld the decision to cancel the appointment of the appellants and opined that the first limb of natural justice i.e. 'rule against bias' was irrefutably proved, as reasonable likelihood of bias was established. The plea of non-impleadment was considered to be a useless formality. It was further held that unless prejudice is demonstrated, mere non-joinder at the initial stage does not violate the principles of natural justice.

II. SUBMISSIONS

11. The foundational contention of the appellants is that since their appointments were cancelled without affording them any hearing and without arraying them as a party in the challenge by the respondent no. 4(Archana Mishra), the adverse decision taken against the appellants, is legally unsustainable. Mr. Vivek Tankha, the learned Senior Counsel would argue that an incorrect narrative was the basis for the allegation made by the respondent No. 4, about unfair selection. It is specifically pointed out that none of the relatives of the candidates had participated during the selection of the appellants. More importantly, the related persons had not awarded any marks 7 of 44 to influence the selection. Specifically adverting to the marks obtained by the challenger and the selectees, the appellants argue that it was a fair selection and that intervention was unmerited.

12. On the other hand, learned Counsel for the respondent, Mrinal Gopal Elker, and Avdhesh Kumar Singh, would rely on Section 40(c) of the Adhiniyam,1993 to project that the said section provides that 'any of the office bearers shall not cause financial gain to his relatives'. According to them, the presence of close relatives in the selection process vitiated the process of selection of Shiksha Karmis. They projected that non- adherence to the principles of audi alteram partem, if any, was cured by the proceedings before the commissioner wherein appellants were given full opportunity. On that basis, it was submitted that the non- granting of opportunity of hearing by the Collector at the original stage was inconsequential. According to the respondent, the reasonable likelihood of bias in selection is established by the close relationship between the Committee members and the selected candidates who have been awarded high marks in comparison to other candidates in the interview process.



III. ISSUES

13. Going by the above submissions, the following broad issues fall for our consideration:

A. Whether the selection is vitiated for violation of the first limb of natural justice i.e. rule against bias?

B. Where it is a case of violation of the principle of audi alteram partem? Is demonstration of prejudice necessary to succeed with a claim of violation of the principle of audi alteram partem?

C. Whether the breach of the principle of audi alteram partem at the original stage can be cured, at the Revisional stage?

IV. DISCUSSION

14. Judicial review of administrative actions are permissible on the grounds of illegality, unreasonableness or irrationality and procedural irregularity5. Lord Diplock6 succinctly described each of the aforementioned grounds for judicial review as under:

"By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the State of A.P. v. McDowell & Company, (1996) 3 SCC 709; Tata Cellular v. Union of India, (1994) 6 SCC 651; and Council of Civil Service Unions v. Minister for Civil Service, 1985 AC 374 (HL); Mohd. Mustafa v. Union of India, (2022) 1 SCC 294.

Council of Civil Service Unions v. Minister for Civil Service, 1985 AC 374.

9 of 44 event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [Edwards v. Bairstow, 1956 AC 14 : (1955) 3 WLR 410 (HL)] , of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review. I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an Administrative Tribunal at all."

15. It is equally well-settled that courts under its writ jurisdiction do not interfere with selections made by expert bodies by reassessing the comparative merits of the candidates. Interference with selections is limited to decisions vitiated by 10 of 44 bias, malafides and violation of statutory provisions 7.

Additionally, this Court has also held that administrative action can be reviewed on the ground of proportionality if it affects fundamental rights guaranteed under Article 19 and 21 of the

Constitution of India8.

16. In this case, our primary focus is on procedural impropriety and in particular, the breach of the principles of natural justice. The process for arriving at a decision is equally significant as the decision itself. If the procedure is not 'fair', the decision cannot be possibly endorsed. The principles of natural justice as derived from common law which guarantee 'fair play in action'9, has two facets which include rule against bias and the rule of fair hearing. Additionally, a reasoned order has also been regarded as a third facet of the principles of natural justice10 and holds utmost significance in ensuring fairness of the process.

ISSUE A 7 Dalpat Abasaheb Solunke v. B.S. Mahajan, (1990) 1 SCC 305; Badrinath v. State of T.N., (2000) 8 SCC 395, National Institute of Mental Health & Neuro Sciences v. K. Kalyana Raman, 1992 Supp (2) SCC 481; I.P.S. Dewan v. Union of India, (1995) 3 SCC 383; UPSC v. Hiranyalal Dev, (1988) 2 SCC 242; ; M.V. Thimmaiah v. UPSC, (2008) 2 SCC 119 and UPSC v. M. Sathiya Priya, (2018) 15 SCC 796 Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039; Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806 Maneka Gandhi v. Union of India, (1978) 1 SCC 248 S.N. Mukherjee v. Union of India, (1990) 4 SCC 594 ; Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India, (1976) 2 SCC 981; CCI v. SAIL, (2010) 10 SCC 744; Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496 11 of 44

17. The first issue that falls for our consideration is whether the selection stands vitiated on the ground of violation of the rule against bias. It must be borne in mind that when a statute specifies the procedure for administrative decision making, the principles of natural justice supplement but do not substitute the statutory procedure11. However, even if the statute does not provide for the administrative procedure, the authorities are bound to make decisions in adherence to the principles of natural justice.

18. Let us now consider the relevant statutory provisions in the present case which operate alongside the common law principles. The Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 is framed in exercise of the powers conferred by sub-section (2) of Section 53, sub-section (1) of Section 70 read with subsection (1) of Section 95 of Adhiniyam, 1993 is apposite. Rule 2(h) defines 'Shiksha Karmi' as under:

> "Shiksha Karmi" means the person appointed by Zila Panchayat or Janpad Panchayat, as the case may be, for teaching in the schools under their control."

19. Rule 5 deals with 'Methods of Selection and Recruitment'. Sub-

rule 8 provides that the Selection Committee shall be AK Kraipak v Union of India (1969) 2 SCC 262 12 of 44 constituted consisting of members as specified in Schedule II by the Zila Panchayat or the Janpad Panchayat, as the case ,may be. The relevant sub-Rule 9 reads as under:

> (i) the Committee will assess the candidates called for interview and award marks in the following manner:

"a) 60% marks for marks obtained in the qualifying examination specified in Schedule II;

b) 25% marks for the teaching experience in the schools of concerning Janpad Panchayat or Zila Panchayat. Similar benefits will be given for teaching experience of equivalent rural school. The decision of the Committee on the validity and valuation of the certificate of teaching experience of rural schools will be final;

c) 15% marks for oral test which may include the test for-

i) communication skills in local dialect

ii) knowledge of local environment

iii) general knowledge

iv) training and teaching aptitude and

v) any other test which the Selection Committee may deem fit.

d) Other things remaining the same, preference, preference will be given to candidates who possess certificate in B. Ed, BTI or D. Ed.

e) All other things remaining the same, in the final selection, those who have teaching experience of schools of Janpad Panchayat or Zila Panchayat will be given preference.

(ii) Select list of each category shall be prepared on the basis of above assessment in order of merit and shall include 10% names in waiting list which shall be valid for six months."

20. The statutory Rules clearly specify the designation of those who must be included in the selection committee, as outlined in Schedule II of the Rules,1997. They are following:

"1.Chairperson, Standing Committee of Education of Janpad Panchayat;

2. Chief Executive Officer, Janpad Panchayat;

3. Block Education Officer (Member Secretary);



4. Two specialists in the subject to be nominated by the Standing Committee for Education of whom one shall be woman; and

5. All members from the Standing Committee of whom atleast one belongs to Scheduled Castes, Scheduled Tribes or OBC, in case there is no SC/ST/OBC member in the Standing Committee then the same shall be nominated from the General Body."

21. Therefore, 'all members from the Standing Committee' were required to be a part of the selection committee. It is also important to note that the following resolution was passed by the Standing Committee on recusal:

> "(C) Letter No. 423/S.T.98 dated 26.07.1998 of the Collector, Chhatarpur was read over by Chief Executive Officer, in which it has been mentioned that at the time of recruitment of teachers those members and officers also take part in the interview whose close relatives are the candidates due to which the entire selection process is likely to be affected. Therefore, the directions are given toimmediately examine whether any candidate is the close relative of the member of the Committee in the interview. If any near relative of the member or the officer is the candidate, then such member or officer should not be present on the date of interview and any impartial person should be kept in his place. The Committee unanimously decided that if any close relative of any member, officer or subject expert appears for interview then the marks to be given by that member, officer or subject specialist should be given by Chief Executive Officer and that member, officer or subject expert shall not be present at the venue of interview. This resolution has been passed unanimously."

22. Rule 40 deals with the removal of office bearers of Panchayat and provides as under:

> "40. Removal of office-bearers of Panchayat- (1) The State Government or the prescribed authority may 14 of 44 after such enquiry as it may deem fit to make at any time, remove an office bearer-
>
> (a) if he has been guilty of misconduct in the discharge of his duties; or
>
> (b) if his continuance in office is undesirable in the interest of the public: Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

Explanation-For the purpose of this sub-section "Misconduct" shall include-

(a) any action adversely affecting,-

(i) the sovereignty, unity and integrity of India; or

(ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or

(iii) the dignity of women; or

(b) gross negligence in the discharge of the duties under this Act;

[(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat. Explanation. - For the purpose of this clause, the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, mother- in-law, father-in-law, brother -in-law, sister-in-law, son-in-law or daughter-in-law : ]"

23. The explanation to clause(c) provides for the definition of the expression 'relative' to mean 'father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law'. Rule 100 of the Adhiniyam which has some relevance reads thus:

> "100. Penalty for acquisition by a member, office bearer or servant of interest in contract. - If a member or office bearer or servant of Panchayat knowingly 15 of 44 acquires, directly or indirectly any personal share or interest in any contract or employment, with, by or on behalf of a Panchayat without the sanction of or permission of the prescribed authority he shall be deemed to have committed an offense under Section 168 of the Penal Code, 1860 (XLV of 1860)."

24. Having noted the relevant statutory provisions, a brief survey of the jurisprudence on the appropriate test for bias and the applicable standard of proof would now be in order before the statutory law and the common law principles are applied to the facts of the present case.

25. The principle of nemo judex causa sua found its origin in English law. In Dimes v. Proprietors of the Grand Junction Canal12, the House of Lords in a case concerning pecuniary interest observed that the rule against bias extends not only to actual bias but also to the appearance of bias. This principle was later extended to other forms of interest in R v. Sussex Justices ex parte McCarthy13 where it was held that 'even a suspicion that there has been improper interference with the course of justice', would lead to the vitiation of proceedings. Lord Hewart noted that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Lord Denning in Metropolitan Properties Co. (FGC) v Lannon14 noted that, 'if right minded Dimes v. The Proprietors of the Grand Junction Canal, (1852) 3 HLC 759 [1924] 1 KB 256 (1969) 1 QB 577 16 of 44 persons would think that, in the circumstances, there was a 'real likelihood of bias' on his part, he should not sit. And if he does sit, his decision does not stand'. It was further held that 'there must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman as the case may be, would, or did, favour one side at the expense of the other.'

26. The emphasis on 'likely or probable' as noted by Lord Denning, was considered in R v Gough15 (for short "Gough") where the Court shifted the focus to the possibility of bias rather than its probability. The test articulated in Gough(supra), was whether there was a 'real danger of bias' rather than a 'real likelihood' of bias. It prioritised the court's assessment of bias over the perception

of a fair-minded and informed observer emphasising that the court 'personifies the reasonable man'. This test was criticised in other common law jurisdictions for veering away from the public perception of bias. The House of Lords modified the said test in Porter v Magill16 and pronounced as under:

> "The Court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased, it must then ask whether those circumstances would lead to a fair minded and informed observer to conclude that there was a real possibility that the Tribunal was biased." R v. Gough, 1993 AC 646 (2002) 1 All ER 465 17 of 44

27. Indian Courts have consistently adopted the 'real likelihood' test to determine bias17. In a recent decision in Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co.18, a constitution bench of this Court speaking through DY Chandrachud CJ(of which one of us was a member), summarised the Indian position thus:

> "Although there have been vacillations about the test in England, the Indian courts have been largely consistent in their approach by applying the test of real likelihood of bias or reasonable apprehension of bias. Recently, the court has used the real danger of bias test. However, the above discussion shows that there is no significant difference between the real danger of bias test and the real possibility of bias test if the question of bias is inferred from the perspective of a reasonable or fair-minded person."

28. Turning now to the facts of the present case, let us first examine whether the selection can be set aside if there are circumstances which would give rise to a reasonable likelihood of bias from the perspective of a fair-minded person:

> (i) The resolution for recusal, passed unanimously by the Janpad Panchayat would be a relevant and an important factor that reflects on the efforts to ensure impartiality in Manak Lal v Dr. Prem Chand Singhvi 1957 SCC OnLine SC 10; Ranjit Thakur v. Union of India (1987) 4 SCC 611; Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School, (1993) 4 SCC 10; S Parthasarathi v. State of AP (1974) 3 SCC 459; SK Golap and others v Bhuban Chandra Panda 1990 SCC OnLine Cal 264; GN Nayak v Goa University (2002) 2 SCC 2024 SCC OnLine SC 3219 18 of 44 the selection process. The resolution mandated that members who had close relatives among the candidates would recuse themselves from the interview process, with their responsibilities being delegated to the Chief Executive Officer. In this manner, the Panchayat addressed the concern and perception of bias in the mind of a fair-minded observer. Recusal is an acceptable mechanism and serves to eliminate any reasonable likelihood of bias. It was however argued that the counter affidavit filed by the Chief Executive Officer, Janpad Panchayat, attaching the certificate given by the Sarpanch of the Panchayat, acknowledges the relationship of the selected/appointed candidates with the

> members of selection committee giving rise to a reasonable conclusion of bias. However, when the concerned person has recused and did not award any marks, it is difficult for us to accept a contention on a so-called relative, influencing the selection.

(ii) The statutory definition of 'relative', as per the Adhiniyam,1993 was not specifically adverted to by the adjudicatory forums. This was an important omission as few candidates do not fall within the scope of this 19 of 44 definition of 'relative'. Thus, the challenge of bias gets diluted further.

(iii) It has also been argued that marks obtained by the Complainant in the interview was more than the marks obtained by the appellants. These facts could have been demonstrated by the appellants (selectees) before the Collector, if they were arrayed as the affected party and opportunity of hearing was provided to them.

29. In a scenario such as this where the members did not participate in the interview, a reasonable likelihood of bias in our opinion cannot reasonably be inferred. While it is true that actual bias need not be proved, this appears to be a case of allegation of bias without any foundational footing. We must also be mindful of the fact that the absence of opportunity of hearing at the initial stage, has prevented the selectee to show that no relative had influenced their selection. It also disables this Court to examine the issue holistically to conclusively determine bias.

30. It must also be emphasized that the nemo judex rule is subject to the rule of necessity and yields to it19. In J Mohapatra v State of Orissa20, the Court recognized that the doctrine of necessity Union of India v Tulsiram Patel, (1985) 3 SCC 398; Swadesh Cotton Mills v Union of India, (1981) 1 SCC 664 (1984) 4 SCC 103 20 of 44 serves as an exception to the rule against bias. In a matter like this, the doctrine of necessity would also be squarely attracted since the statute explicitly mandates the composition of the selection Committee, as outlined in Schedule II of the Rules. The doctrine of necessity recognizes that decision-making bodies need to function even in circumstances where potential conflicts of interests may arise. Here as earlier noted, the concerned members recused and did not award any marks. It must however be borne in mind that the doctrine of necessity is an exception and must be applied bearing in mind the circumstances in a given case. The size of the jurisdiction must also be taken into account for the application of the doctrine of necessity. In this regard, Forsyth and Wade21 have noted that in small jurisdictions, qualified persons may be few in number and likely to be known to the parties making the 'fair minded and informed observer' test impractical. The doctrine of necessity is where such considerations of size should be considered rather than in the distortion of the test.

31. The assumption of impartiality must not also be an abstract analysis but should equally consider the contextual background, for the application of the doctrine of necessity. This is a selection at a village level where it is very likely, that H. W. R. Wade, Administrative Law (5th Edition) 21 of 44 people involved would know each other. In Charanjit Singh v Harinder Sharma22, a public interest action was filed challenging the selection of clerks, firemen, drivers, peons and instructors for the Municipal Council in Mansa, a small town in Punjab by a selection committee which had relatives of some of the selectees on it. The High Court had quashed the decision but the Supreme Court noted that in a small town like Mansa, it would be difficult to constitute a Selection Committee of total

strangers. The relative of some candidate or the other is bound to find a place on the Committee. Therefore, the Court is required to see whether the prescribed balancing mechanism was followed when a relative of the member of the Selection Committee was being considered. The Rules required that when such a candidate appeared, the concerned selection committee member should recuse from the proceedings and such a candidate could only be appointed after obtaining the approval of the Regional Deputy Director, Local Government. This was seen as an acceptable mode to rule out bias in selection or selections being influenced by a relative.

32. Reliance has been placed on the landmark decision in Kraipak(supra) that significantly expanded the scope of judicial review of administrative decisions. This ruling was cited in (2002) 9 SCC 732 22 of 44 Javid Rasool Bhat v. State of Jammu & Kashmir23 where the Court distinguished Kraipak(supra) as under:

> "Great reliance was placed by the learned counsel on A.K. Kraipak & Ors. V. Union of India on the question of natural justice. We do not think that the case is of any assistance to the petitioners. It was a case where one of the persons, who sat as member of the Selection Board, was himself one of the persons to be considered for selection. He participated in the deliberations of the Selection Board when the clams of his rivals were considered. He participated in the decisions relating to the orders of preference and seniority. He participated at every stage in the deliberations of the Selection Board and at every stage there was a conflict between his interest and duty. The court had no hesitation coming to the conclusion that there was a reasonable likelihood of ibis and therefore, there was a violation of the principles of natural justice. In the case before us, the Principal of the Medical College, Srinagar, dissociated himself from the written test and did not participate in the proceedings when his daughter was interviewed. When the other candidates were interviewed, he did not know the marks obtained either by his daughter or by any of the candidates. There was no occasion to suspect his bona fides even remotely. There was not even a suspicion of bias, leave alone a reasonable likelihood of bias. There was no violation of the principals of natural justice."
>
> 33. A five-judge constitution bench of this Court in Ashok Kumar Yadav v State of Haryana24 endorsed the decision in Javed Rasool(supra) and held that when a near relative of a member of the Public Service Commission is a member of the Selection Committee, it will be enough if the concerned member desists from interviewing his relation. He should withdraw from the committee when his relative appears for the interview and he (1984) 2 SCC 682 (1985) 4 SCC 417

23 of 44 should not participate in discussion in regards to the merit of the candidate and even the marks should not be disclosed to the concerned member.

34. Similarly, in Jaswant Singh Nerwal v State of Punjab25, the father of one of the selected candidates was in the selection committee conducting the interview. However, he did not participate in the deliberation when his son appeared for viva voce. It was held therein that selection was thus

not vitiated.

35. Guided by the above ratios, on facts, this clearly appears to be a case of mere suspicion of bias particularly on account of the fact that the Janpad Panchayat unanimously passed a resolution for recusal of the concerned member. It must also be borne in mind that rule against bias is itself considered as a ground for recusal. The selectees were not arrayed and they couldn't contest the selection before the Collector, in the absence of a complete picture on the process, it is all the more difficult to deduce that there was a reasonable likelihood of bias. In light of the aforesaid reasons, our conclusion in this matter is that the selection is not vitiated on account of violation of the nemo judex rule.

ISSUE B 1991 Supp (1) SCC 313 24 of 44

36. This brings us to the second limb of the principle of natural justice i.e. audi alteram partem and whether the demonstration of prejudice is mandatory for raising a claim of violation of right of hearing. The principle of audi alteram partem lies at the very heart of procedural fairness, ensuring that no one is condemned or adversely affected, without being given an opportunity to present their case. The decision in Ridge v Baldwin26 is regarded as a significant landmark decision in British administrative law and is often referred to as a magna carta of natural justice. This decision has resonated deeply in the Indian legal context where natural justice principles are firmly entrenched with constitutional guarantees.

37. In Mohinder Singh Gill v. Chief Election Commr 27 (for short 'Mohinder Gill'), this Court observed that:

> "Today in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity belights penumbral areas, it is only improving the quality of government by injecting fair play into its wheels.. law lives not in a world of abstractions but in a cosmos of concreteness and to give up something good must be limited to extreme cases. If to condemn unheard is wrong, it is wrong except where it is overborne by social necessity."

38. In Swadeshi Cotton Mills v. Union of India28, this Court held:

> "this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity [1964] AC 40 (1978) 1 SCC 405 (1981) 1 SCC 664 25 of 44 so demands. The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications."

39. Justice Bhagwati in Maneka Gandhi v Union of India29, described natural justice as a profound 'humanising principle' designed to imbue the law with fairness and ensure justice. This principle has garnered widespread recognition across democratic societies and has evolved into a universally accepted rule, influencing areas of administrative decision- making.

40. Wade and Forsyth30 discuss the essence of good and considerate administration as under:

> "Judges are naturally inclined to use their discretion when a plea of natural justice is used as the last refuge of a claimant with a bad case. But that should not be allowed to weaken the the basic principle that fair procedure comes first, and that it is only after hearing both sides that merits can be properly considered. In the case of a tribunal which must decide according to, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless. But in the case of a discretionary administrative decision, such as dismissal of a teacher or expulsion of a student, hearing their case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified. This is the essence of a good and considerate administration, and the law should take care to preserve it." (1978) 1 SCC 248 H W R Wade and C F Forsyth, Administrative Law (Oxford University Press, 11th ed, 2014) 26 of 44

41. The opportunity of hearing is considered so fundamental to any civilised legal system that the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds 31.

42. It has been argued before us that if the failure to provide hearing does not cause prejudice, observing the principle of natural justice may not be necessary. In this context, a three judge bench of this Court in SL Kapoor v Jagmohan32 speaking through Justice Chinappa Reddy considered such arguments to be 'pernicious' and held that 'the non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary' . The Supreme Court, however, has drawn out an exception where 'on admitted or indisputable facts only one conclusion is possible, and under the law, only one penalty is permissible, then the Court may not compel the observance of natural justice'33.

43. Professor IP Massey34 has commented on this shift as under:

> "Before the decision of the Highest Court in SL Kapoor v Jagmohan, the rule was that the principles of natural justice shall apply only when the an administrative action has caused some prejudice to the person, meaning thereby that he must have suffered some 'civil consequences'.
>
> Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545) (1980) 4 SCC 379 Swadeshi Cotton Mills v Union of India (1981) 1 SCC 664; Aligarh Muslim University v Mansoor Ali Khan (200) 7 SCC 529 I.P. Massey, Administrative Law (8th Edition,2012) 27 of 44 Therefore, the person had to show something extra in order to prove 'prejudice' or civil consequences. This approach had stultified the growth of administrative law within an area of highly practical significance. It is gratifying that in Jagmohan, the Court took a bold step in holding that a separate showing of prejudice is not necessary. The non-observance of natural justice is in itself prejudice

> caused. However, merely because facts are admitted or are undisputable it does not follow that the principles of natural justice need not be observed."

44. In Bank of Patiala v SK Sharma35, the Supreme Court observed that where an enquiry is not convened by any statutory provision and the only obligation of the administrative authority is to observe the principles of natural justice, the Court/tribunal should make a distinction between a total violation of the rule of fair hearing and violation of the facet of that rule. In other words, a distinction must be made between 'no opportunity' or 'no adequate opportunity'. In the case of the former, the order passed would undoubtedly be invalid and the authority may be asked to conduct proceedings afresh according to the rule of fair hearing. But in the latter case, the effect of violation of a facet of the rule of fair hearing has to be examined from the standpoint of prejudice.

45. In Dharampal Satyapal Ltd. v. Dy. Comm. Of Central Excise, Gauhati and Ors.36, this Court dealt with the prejudice question as under:

> (1996) 3 SCC 364 (2015) 8 SCC 519 28 of 44 "42. So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in General Medical Council v. Spackman [1943 AC 627].

This Court also spoke in the same language in Board of High School and Intermediate Education v. Chitra Srivastava [(1970) 1 SCC 121]....."

46. In a more recent decision in State of UP v Sudhir Kumar Singh37, the position of law was summarised as under:

> "(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
>
> (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

> (3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
>
> (2021) 19 SCC 706 29 of 44 (4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

47. The aforementioned principles on the 'prejudice exception' must not be however be understood as infringing upon the core of the principle of audi alteram partem. In this regard, the constitutionalisation of administrative law and the doctrinal shifts spearheaded in Maneka Gandhi(supra) were succinctly observed in a recent judgment in Madhyamam Broadcasting Ltd. v. Union of India38, as under:

> "55.1.Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, the courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379; "The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary; also see Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664 : AIR 1981 SC 818] Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. [Olga (2023) 13 SCC 401 30 of 44 Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545; C.B. Gautam v. Union of India, (1993) 1 SCC 78; Sahara India (Firm) (1) v. CIT, (2008) 14 SCC 151; Kesar Enterprises Ltd. v. State of U.P., (2011) 13 SCC 733] 55.2. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. The facet of audi alteram partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal.

While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing. [See para 12 of Bhagwati, J.'s judgment in Maneka Gandhi v. Union of India, (1978) 1 SCC 248.]"

48. Pertinently on the issue, a five judge bench of this Court in CORE(supra) described the object of observing the principles of natural justice as under:

> "80. ...The object of observing the principles of natural justice is to ensure that "every person whose rights are going to be affected by the proposed action gets a fair hearing." The non-observance of natural justice is itself a prejudice to any person who has been denied justice depending upon the facts and circumstances of each case. The principle of procedural fairness is rooted in the principles of the rule of law and good governance. In Madhyamam Broadcasting Limited v. Union of India(2023) 13 SCC 401 , this Court held that the requirement of procedural fairness "holds an inherent value in itself." 31 of 44

49. Returning to the facts of the present case, the Collector records in his order that even though the selected 'relatives' have not been made parties, 'it is proved that the appointment of these relatives could not be deemed to be made according to the scheme' and hence it is not necessary to provide an opportunity of hearing. This was reiterated by the Commissioner in his Revisional order. The Division Bench in its order also notes that it was imperative to implead the affected parties. As noted by Justice Vishwanathan, Respondent No. 4(Archana Mishra) ought to have impleaded the candidates who were selected and appointed and even if she didn't array the affected parties, the Collector should have given an order for impleadment of the selectees. The facts here are not such where only one position emerges. It is a case of disputed facts. Significantly the legal effect of recusal was not examined in the orders and it is difficult to speculate what the conclusion of the Collector and the Revisional authority would have been, if they were posted of the recusal resolution.

50. Moreover, the question about whether prejudice was caused due to non-observance of the principles of natural justice could not be raised where such principles are incorporated into 32 of 44 statutory procedure39. In this regard, Rule 9 is crucial and reads as under:

> "9. Power of appellate or revisional authority.- The appellate or revisional authority after giving an opportunity to

parties to be heard and after such further enquiry, if any, as it may deem necessary subject to the provisions of the Act and the rules made thereunder, may confirm, vary or set aside the order or decision appealed against."

51. Considering the above, Justice Vishwanathan rightly notes as under:

> "At least at the stage when the Collector identified all the 14 names, Rule 9 of the A&R Rules, ought to have been complied with and notices ought to have been issued giving an opportunity to the selected candidates to set out their version and thereafter hold such enquiry as the Collector may deem necessary. This was also not done. This is all the more when only the appointment of the 14 candidates of the 249 appointees/candidates were set aside on the ground that 33 they were relatives and it was not a case of setting aside of the entire selection.
>
> It is well settled that in service matters when an unsuccessful candidate challenges the selection process, in a case like the present where the specific grievance was against 14 candidates under the category of relatives and when the overall figure was only 249, at least the candidates against whom specific allegations were made and who were identified ought to have been given notices and made a party. This Court has, even in cases where the selected candidates were too large, unlike in the present case, held that even while adjudicating the writ petitions at least some of the selected candidates ought to be impleaded even it is in a representative capacity. It has also been held that in service jurisprudence, if an unsuccessful candidate challenges the selection process the selected candidates ought to be impleaded. [See J.S. Yadav vs. State of Uttar Pradesh and Another, (2011) 6 SCC State Govt. Houseless Harijan Employees Association v State of Karnataka (2001) 1 SCC 610 33 of 44 570 (para 31) and Prabodh Verma and Others vs. State of Uttar Pradesh and Others, (1984) 4 SCC 251 (para 28) and Ranjan Kumar and Others vs. State of Bihar and Others, 2014:INSC:276 = (2014) 16 SCC 187 (paras 4,5,8,9 & 13)] This is not a case where the allegation was that the mischief was so widespread and all pervasive affecting the result of the selection in a manner as to make it difficult to sift the grain from the chaff. It could not be said and it is not even the case of the State that it was not possible to segregate the allegedly tainted candidates from the untainted candidates. [See Union of India and Others vs. G. Chakradhar, (2002) 5 SCC 146 (paras 7 & 8), Abhishek Kumar Singh vs. G. Pattanaik and Others, 2021:INSC:305 = (2021) 7 SCC 613 (para 72)."

52. In a catena of cases, significantly a clear distinction has been crafted by this Court between the service of notice and the requirement of fair hearing40. The respondents rely on SK Sharma(supra) which highlights the circumstances when non- adherence to the principle of natural justice, will not be fatal. It must however be borne in mind that S.K. Sharma (supra) was not a case of total denial of opportunity unlike in the present case. In fact, as Justice Vishwanathan rightly notes in S.K. Sharma (supra), after noticing the classic case of Ridge vs. Baldwin41 , this Court expressly records that where there is a total violation of principles of natural justice, the violation would be of a fundamental nature. Therefore, SK Sarma(supra) did not deal with the violation of the first limb of East India Commercial Co. Ltd. v. Collector of Customs AIR 1962 SC 1893; Uma Nath Pandey and Ors. v state of UP (2009) 12 SCC 40 1964 AC 40 34 of 44 Audi Alteram Partem principles, a situation of non-service of notice. The judgment in fact explicitly records that "a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such, and violation of a facet of the said principle. In other words, distinction between "no notice" "no hearing"

and “no adequate hearing” or to put it in different words, “no opportunity” and “no adequate opportunity”, was highlighted. The judgement in SK Sharma(supra) is therefore inapplicable to the present matter which is a case of no notice whatsoever.

53. The statutory provision also clearly provided for an opportunity of hearing:

> “40. Removal of office-bearers of Panchayat- (1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office-bearer-
>
> (a) if he has been guilty of misconduct in the discharge of his duties; or
>
> (b) if his continuance in office is undesirable in the interest of the public:
>
> Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.” [emphasis supplied]

54. In the absence of notice, the breach strikes at the fundamental core of procedural fairness, rendering the decision invalid 35 of 44 unless exceptional circumstances justify such deviation. The vitiation of selection was not only a breach of the principles of natural justice but also contrary to the express statutory provision that required for an opportunity to show cause and an opportunity to provide self-defence. The prejudice theory must be understood as an exception to the general rule and cannot therefore be the norm. In view of the foregoing, a gross violation of the principle of audi alteram partem is noticed in the present case.

ISSUE C

55. The next issue that falls for our consideration is whether the denial of natural justice at the initial stage can be cured by an appellate body. The earliest decision on the issue was delivered by the High Court of Australia in Australian Workers’ Union v Bowen42. Bowen contested his dismissal by the General Council of the Union, claiming bias because the Union Secretary acted as both prosecutor and judge. While the Commonwealth Court of Conciliation and Arbitration ruled in his favour, the decision was overturned on appeal. The appellate court held that the Secretary’s role did not violate the rule against bias and, even if it had, any flaw in the original Australian Workers’ Union v Bowen (No. 2) (1948) 77 C.L.R. 601 36 of 44 proceedings was remedied by a fair appeal to the Annual Conference, which Bowen did not dispute.

56. Thereafter, in a case involving a trade union dispute, Lord Denning in Annamunthodo v Oilfield Workers’ Trade Union 43, ruled that a flaw in natural justice during the initial hearing could not be remedied by an appeal.

57. Leary v. National Union of Vehicle Builders44 (for short “Leary”) is a leading authority on the point that a failure of natural justice at the initial stage cannot be cured at the appellate stage. The case involved the plaintiff’s expulsion by a Branch Committee of his trade union, at a meeting about

which he was unaware. He approached the Appeals Council for relief against the order of the branch Committee, which conducted a full rehearing but upheld the Branch Committee's decision. The plaintiff then filed a writ, seeking declarations that his expulsion from union membership as well as his position as area organizer was unlawful, invalid, and void. Megarry J framed the question thus:

> "if a man has never had a fair trial by the appropriate trial body, is it open to an appellate body to discard its appellate function and itself give the man the fair trial that he has never had?. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal?... Even if the appeal is treated as a hearing de novo, the member [1961] AC 945 (PC) (1970) 2 All ER 713 37 of 44 is being stripped of his right to appeal to another body from the effective decision to expel him'

58. It was held that the proper course in such a situation would be to hear the matter afresh:

> "If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of a right of appeal when a valid decision to expel him is subsequently made. Such a deprivation is a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

59. In Calvin v Carr45(for short "Calvin"), the Judicial Committee of the Privy Council only gave a qualified endorsement to the Leary principle. In Lloyd v McMahon46, Lord Templeman considered the Calvin principle but commented that instead of laying down general principles, the question arising in that case must be answered by considering the particular statutory (1979) 2 WLR 755 (1987) 1 AC 625 38 of 44 provisions applicable therein. In that case, a distinction was drawn between full appeals where all the evidence may be examined and limited appeals on questions of law only or where the appellate body does not investigate findings of fact.

60. Indian courts have applied the Leary principle as a rule47 and the Calvin principle as an exception48. This is more so due to the institutional structure as the writ court does not usually go into facts and judicial review of administrative action is limited to the decision-making process and not the decision itself. In our view, the provision for an appeal should not rest on the assumption

that the appellate body is infallible. When one party is denied the opportunity to present their case, the initial decision fails to provide meaningful guidance to the appellate authority, in achieving a fair and just resolution.

61. In this context, Professor Wade49 has observed as under:

> "In principle, there ought to be an observance of natural justice at both stages... If natural justice is violated at the first stage , the right to appeal is not so much a true right to appeal as a corrected initial hearing: instead of fair trial followed by appeal., the Institute of Chartered Accountants v. L. K. Ratna (1986) 4 SCC 537; Fareed Ahmed v Ahmedabad Municipality AIR 1976 SC 2095; Shri Mandir Sita Ramji v Government of Delhi (1975) 4 SCC 298; Mysore SRT Corp v Mirza Khasim AIR 1977 SC 747; Laxmidhar v State of Orissa AIR 1974 Ori 127; Kashiram Dalmia v State AIR 1978 Pat 265; G Rajalakshmi v Appellate Authority AIR 1980 AP 100; Serajuddin Co. v State of Orissa AIR 1974 Cal 296 Charan Lal Sahu v Union of India (1990) 1 SCC 613; Jayantilal Ratanchand Shah v Reserve Bank of India (1996) 9 SCC 650; United Planters' Association of Southern India v KG Sangameswaran (1997) 4 SCC 741 H. W. R. Wade, Administrative Law ((Oxford: Clarendon Press 1982) 39 of 44 procedure is reduced to an unfair trial followed by fair trial"

62. Professor Laurence Tribe50 had pertinently observed that whatever the outcome, a valued human interaction in which the affected person experiences atleast the satisfaction of participating in the decision that vitally concerns her is of utmost importance:

> "Both from the right to be heard and the right to be told why, are analytically distinct from the right to secre a different outcome; these rights to interchange express the elementary idea that to be a person, rather than a thing, is at atleast to be consulted about what is done with one."

63. In Institute of Chartered Accountants v. L. K. Ratna51, the Indian Supreme Court endorsed the position adopted by Megarry J. Rejecting the argument that an appeal to the High Court under Section 22A of the Chartered Accountants Act, 1949, could rectify the initial defect, Pathak J. declared the order null, void, and of no effect. This ruling was consistent with two earlier Supreme Court decisions in State of U.P. v. Mohammed Nooh52 and Mysore State Road Transport Corporation v. Mirja Khasim 53, both of which established that an appeal cannot validate what is clearly a nullity.

Lawrence H. Tribe, 'American Constitutional Law' ((The Foundation Press 1978) (1986) 4 SCC 537 1958 SCR 595 (1977) 2 SCC 457 40 of 44

64. The Supreme Court has invoked the Calvin principle only in exceptional circumstances. For instance, in Charan Lal Sahu v Union of India54 in a case concerning a challenge to the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, the Court applied the Calvin principle, given the fact that the settlement fund was held to be sufficient to meet the needs of just

compensation to the victims of the Bhopal gas leak tragedy, it was held that the grievance on the score of not hearing the victims first would not really survive. It recorded that "to do a great right" after all it is permissible sometimes "to do a little wrong".

65. What is also of fundamental importance in the present case is that Rule 5(b) clearly provided that application for revision could be only entertained on the point of law and not on facts:

> "(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts."

66. Additionally, a perusal of the order(s) of the Collector and Commissioner in Revision would also show that they are practically identical. An ineffective hearing at the initial stage therefore taints the entire decision-making process leading to a cascade of flawed orders at subsequent stages. Providing a (1990) 1 SCC 613 41 of 44 hearing to the affected individual, minimizes the risk of administrative authorities making decisions in ignorance of facts or other relevant circumstances, as it allows all pertinent issues to be brought to light. This process not only aids the administration in arriving at a correct decisions but also enables courts to more effectively review such actions. The primary purpose of natural justice is to assist the administration in reaching sound decisions at the outset, reducing the likelihood of decisions being overturned later. Its significance lies in fostering fair and well-informed decision- making at the very first instance.

67. Following the above discussion, it must be concluded that a defect at the initial stage cannot generally be cured at the appellate stage. Even in cases where a 'full jurisdiction' may be available at the appellate stage, the Courts must have the discretion to relegate it to the original stage for an opportunity of hearing. Therefore, the ex-parte decision to set aside the appellants selection stands vitiated.

V. CONCLUSION

68. The principle of audi alteram partem is the cornerstone of justice, ensuring that no person is condemned unheard. This principle transforms justice from a mere technical formality into a humane pursuit. It safeguards against arbitrary 42 of 44 decision-making, and is needed more so in cases of unequal power dynamics55.

69. An allegation of bias, can only be proved if facts are established after giving an opportunity of hearing. This process requires a fair and transparent procedure in which the concerned parties are given an adequate opportunity to present their case. Such an opportunity allows the accused party or the affected individuals to respond to the allegations, provide evidence, and clarify any misgivings regarding the decision-making process. Therefore, for an allegation of bias to be proved, it is imperative that the procedural safeguards of a fair hearing are observed allowing for establishment of the relevant facts.

70. In light of the foregoing, we uphold the opinion of Justice KV Vishwanathan allowing the appeal(s) and setting aside the judgment of the Division Bench. Resultantly, this Court is not able to

endorse the opinion rendered by Justice JK Maheshwari.

71. Since the selection pertains to the year 1998, and the appellants have continuously held office and performed their duties for over twenty-five years under interim orders, remanding the matter for a fresh inquiry would hardly be a Upendra Baxi, 'Preface: The Myth and Reality of the Indian Administrative Law', in IP Massey(ed) 'Administrative Law' (8th edn, EBC 2012) 43 of 44 practical exercise and will be an injustice to the appointees.

The time lag can be better appreciated by bearing in mind that one of the appellants has already superannuated.

72. The matters stand answered and allowed on the above terms.

Parties to bear their own cost.

.....J [HRISHIKESH ROY] .....J [SUDHANSHU DHULIA] .....J [S.V.N. BHATTI] NEW DELHI;

JANUARY 29, 2025 44 of 44