Office Of The Odisha Lokayukta vs Pradeep Kumar Panigrahi on 23 February, 2023

Author: Ajay Rastogi

Bench: Bela M. Trivedi, Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(Civil) No(s). 6261-6262 of 2021)

OFFICE OF THE ODISHA
LOKAYUKTA ….APPELLANT(S)

VERSUS

DR. PRADEEP KUMAR PANIGRAHI
AND OTHERS ….RESPONDENT(S)

JUDGMENT

Rastogi, J.

1. Leave granted.

2. The instant appeals are directed against the judgment dated 3rd February, 2021 passed by the Division Bench of the High Court of Orissa at Cuttack setting aside Order dated 11 th December, 2020 passed by the Odisha Lokayukta initiating to conduct a preliminary inquiry in exercise of power conferred under Section 20(1) of the Odisha Lokayukta Act, 2014(hereinafter being referred to as the "Act 2014") on a complaint dated 9 th December, 2020 received from Mr.Ranjan Kumar Das, Deputy Superintendent of Police, Vigilance Cell Unit, Bhubaneswar indicating the alleged corruption against respondent no. 1 who is the elected Member of the Legislative Assembly of Gopalpur Constituency directing the Directorate of Vigilance, Cuttack to conduct a preliminary inquiry and submit a report to the Lokayukta.

3. The review petition filed at the instance of the appellant on the premise that Odisha Lokayukta was never heard and no opportunity of hearing has been afforded before passing of the impugned Order dated 3rd February, 2021 and it was in violation of the principles of natural justice, came to be dismissed by passing a non-speaking Order dated 5th April, 2021.

4. Respondent no. 1 is an elected Member of the Legislative Assembly. Mr. Ranjan Kumar Das, the then Deputy Superintendent of Police, Vigilance Cell Unit, Bhubaneswar, made a complaint dated 9th December, 2020 indicating serious allegations of alleged corruption against Member of the Odisha Legislative Assembly of Gopalpur Constituency. Along with the complaint, supporting documents were also annexed. The Odisha Lokayukta, after taking into consideration the contents of the complaint and the supporting documents annexed thereto, in exercise of power conferred under Section 20(1) of the Act, 2014 directed the Directorate of Vigilance, Odisha, Cuttack to conduct a preliminary inquiry against respondent no. 1 and submit a report within two months with a further direction that the Directorate of Vigilance must ensure that during preliminary inquiry, the mandate of Section 20(2) has to be complied with and further directed the Office of Lokayukta to make available all the relevant record to the Directorate of Vigilance for compliance.

5. Immediately on a reference made by the Odisha Lokayukta by its Order dated 11th December, 2020 directing the Directorate of Vigilance to conduct a preliminary inquiry against respondent no. 1 and calling upon the report, came to be challenged by respondent no. 1 by filing writ petition before the High Court under Article 226 of the Constitution. Although the Office of Lokayukta was impleaded as one of respondent before the High Court but as informed to this Court, no notice was issued to them and on the first date of hearing, without even affording opportunity of hearing to the appellant to submit their written response, the Division Bench of the High Court under Order dated 3 rd February, 2021 proceeded on the premise that entrusting Directorate of Vigilance to conduct preliminary inquiry is not in terms of the mandate of Section 20(1) and set aside the Order dated 11 th December, 2020 with a liberty to the Lokayukta to conduct preliminary inquiry, if so advised, against respondent no. 1 by the inquiry wing of the Lokayukta with a further liberty to proceed in conformity with the requirements of Sections 20(2) and 20(3) after the preliminary report being furnished by the inquiry wing of the Lokayukta.

6. A review filed by the Lokayukta against the Order impugned dated 3rd February, 2021 came to be dismissed by a non-speaking order dated 5th April, 2021 which is a subject matter of challenge in the appeals before us.

7. Learned counsel for the appellant submits that the order impugned dated 3rd February, 2021 is in violation of the principles of nature justice and the finding has been recorded without affording an opportunity of hearing to the appellant and that apart, it is not in conformity with the mandate of Section 20(1) of the Act 2014.

8. Learned counsel further submits that Section 20(1) provides an option to the Lokayukta, who, on receipt of a complaint, if order to hold a preliminary inquiry against any public servant, may conduct either by its enquiry wing or by any agency to ascertain as to whether there exists any prima facie case for proceeding in the matter any further. If the relevant provisions of the Act are being

looked into, particularly Chapter VIII of the Act 2014, any agency as referred to under Section 25 includes the State Vigilance and Crime Branch for the purpose of conducting preliminary inquiry or investigation, as the case may be, and that is further strengthened by the procedure for conducting a preliminary inquiry or investigation envisaged under Section 28 wherein it is open for the Lokayukta to conduct preliminary inquiry or investigation through the agency of the Government. In the given facts and circumstances, the finding which has been recorded by the Division Bench of the High Court that entrusting to conduct preliminary inquiry by the Directorate of Vigilance under Order dated 11 th December, 2020 is not in conformity with the Act 2014, needs to be interfered with by this Court.

9. Learned counsel further submits that calling upon the inquiry wing or any agency to conduct a preliminary inquiry is only for a limited purpose to ascertain whether there exists prima facie case to proceed in the matter. The Legislature was conscious of the fact that if it may cause any prejudice to the incumbent against whom the prima facie case has been registered and before any further action is being taken or to make any recommendation to proceed either to conduct investigation or initiate a departmental inquiry, it is incumbent upon the Lokayukta to afford an opportunity of hearing to the public servant as referred to under Sections 20(2) and 20(3) of the Act, 2014. A complete inbuilt procedure has been prescribed under Chapter VII for conducting preliminary inquiry and investigation within the powers of the Lokayukta. Chapter VIII prescribes not only the purpose of conducting preliminary inquiry and investigation but also in reaching to a final conclusion even at the stage of registering of the charge□sheet as referred to under Section 20(8) of the Act, 2014.

10. Learned counsel further submits that no adverse or prejudicial action was taken by the appellant in initiating to conduct a preliminary inquiry under its Order dated 11th December 2020, thus the interference made by the High Court, at this stage, in exercise of its jurisdiction under Article 226 of the Constitution of India was neither valid nor justified.

11. Per contra, learned counsel for the respondents, on the other hand, submits that a complaint was made by the Deputy Superintendent of Police, Vigilance Cell, Bhubaneshwar dated 9 th December, 2020, who was the Officer of Directorate of Vigilance, Cuttack, Odisha, Cuttack and direction was given to the Directorate of Vigilance, Odisha to conduct a preliminary inquiry by Order dated 11th December, 2020, the decision itself was in violation of the principles of natural justice. Once the complaint was made by the officer of the Directorate of Vigilance, at least entrusting the preliminary inquiry to be conducted by another Officer of the Directorate of Vigilance, may be senior in the ladder, was not legally justified. The Officer of the Department has made a complaint on 9th December, 2020 and other officer is called upon to conduct a preliminary inquiry as stated that one cannot be a judge in its own cause and that being the reason, the Division Bench of the High Court has permitted the Lokayukta to conduct an inquiry by the inquiry wing of the Lokayukta and administrative bias can’t be ruled out of the Directorate of Vigilance who is to conduct a preliminary inquiry.

12. Learned counsel further submits that since the respondents were duly represented and the Advocate General of the State appeared along with the State counsel, opportunity of hearing was afforded to the appellant and plea of the principles of natural justice as prayed for by the appellant

being violated, in the facts and circumstances, does not hold good. That apart, review petition came to be rightly dismissed as the appellant failed to justify any manifest error being committed by the Division Bench of the High Court under its Order dated 3rd February, 2021 which may call for our interference.

13. It may be noticed that while issuing notice by this Court on 23rd April, 2021, operation of the impugned order was stayed. In furtherance of the stay granted by this Court, it is informed that the appellant has proceeded further and after the preliminary inquiry report being submitted to the Lokayukta by the Officer Shri P.K. Naik on 28th May, 2021 and after affording opportunity of hearing to the appellant, a detailed Order was passed by the Lokayukta under Section 20(3)(a) dated 27th September, 2021 directing the Directorate of Vigilance to carry out investigation. In furtherance thereof, Directorate of Vigilance submitted a detailed report of investigation to the Lokayukta on 7th June, 2022, however, no further action has been initiated and awaiting orders of this Court which is indicated in the order dated 24th June, 2022 placed on record along with IA No. 89629 of 2022.

14. We have heard learned counsel for the parties and with their assistance perused the material available on record.

15. Before we proceed to examine the question raised in the instant appeals, it may be apposite to first take a bird's eye view of the Scheme of the Act, 2014.

16. The Act, 2014 has been enacted by the legislature of the State of Odisha having been assented to by the President on the 16 th January, 2015 with an object to provide for the establishment of the body of Lokayukta for the State of Odisha to inquire into allegations of corruption against public functionaries and for matters connected therewith or incidental thereto. The Act is applicable to the public servants of the State of Odisha serving in and outside the State and the public servants under the control of Government of Odisha.

17. A 'complaint' has been defined under Section 2(d), and the term 'preliminary inquiry' and 'public servant' under Sections 2(l) and 2(n) of the Act 2014 which are stated as follows:□"2. (1) In this Act, unless the context otherwise requires,— .....

(d) "complaint" means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act,1988;

.....

(l) "preliminary inquiry" means an inquiry conducted under this Act; .....

(n) "public servant" means a person referred to in clauses (a) to (h) of sub□section (1) of section 14 but does not include a public servant in respect of whom the jurisdiction is exercisable by any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957 and the Coast Guard Act, 1978 or the procedure is applicable to such public servant under those Acts;

.....".

18. Chapter VII prescribes the procedure in respect of preliminary inquiry and investigation, the relevant part of which is reproduced as under:□"20. (1) The Lokayukta, on receipt of a complaint, if it decides to proceed further, may order—

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency to ascertain whether there exists a prima facie case for proceeding in the matter; or

(b) investigation by any agency or authority empowered under any law to investigate, where there exists a prima facie case:

> Provided that any investigation under this clause shall be ordered only if in the opinion of the Lokayukta there is substantial material relating to the existence of a prima facie case or any earlier statutory investigation or enquiry regarding the same complaint reveals that a prima facie case exists:
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> Provided further that before ordering an investigation under this clause, the Lokayukta shall call for the explanation of the public servant and views of the competent authority, so as to determine whether there exists a prima facie case for investigation:
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> Provided also that a decision to order investigation under this clause shall be taken by a bench constituted by the Chairperson under section 16.
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> (2) During the preliminary inquiry referred to in sub□section (1), the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected, seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokayukta.
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> (3) A bench consisting of not less than three Members of the Lokayukta shall consider every report received under sub□section (2) from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant, decide as to whether there exists a prima facie case, and make recommendations to proceed with one or more of the following actions, namely:
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> —
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> (a) investigation by any agency (including any special investigation agency);
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> (b) initiation of the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority;

(c) closure of the proceedings against the public servant and take action to proceed against the complainant under section 46.

(4) The promotion and other service benefits of a public servant mentioned in clauses (e) to (h) of sub-section (1) of section 14 shall not be affected until the public servant is put under suspension on recommendation of the Lokayukta under section 32 or charge sheet is filed after completion of investigation under clause (a) of sub-section (3) or a charge memo is issued against the said public servant in a disciplinary proceeding initiated on the recommendation of the Lokayukta under clause (b) of sub-section (3).

(5) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(6) In case the Lokayukta decides to proceed to investigate into the complaint, it shall, by order in writing, direct any investigating agency (including any special agency) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:

Provided that the Lokayukta, for the reasons to be recorded in writing, may extend the said period by a further period not exceeding six months at a time and for the maximum period of two years.

(7) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any investigating agency (including any special agency) shall, in respect of cases referred to it by the Lokayukta, submit the investigation report to the Lokayukta.

(8) A bench consisting of not less than three Members of the Lokayukta shall consider every report received by it under sub-section (7) from any investigating agency (including any special agency) and may, decide as to—

(a) filing of charge-sheet or closure report before the Special Court against the public servant;

(b) initiating the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.

(9) The Lokayukta may, after taking a decision under sub-section (8) on the filing of the charge sheet, direct its Prosecution Wing to initiate prosecution in a Special Court in respect of cases investigated by any investigating agency (including any special agency).

....."

19. Section 20 provides an inbuilt mechanism laying down the procedure to be followed in holding preliminary inquiry and investigation which the Lokayukta, in the facts and circumstances, on receipt of a complaint may decide □either order for conducting preliminary inquiry against the public servant by its inquiry wing or any agency to ascertain whether there exists a prima facie case for proceeding in the matter; or direct to hold an investigation by any agency or authority empowered under any law to investigate, to record its satisfaction whether there exists a prima facie case.

20. Sub□sections (2), (3) and (4) provide the procedure which has to be followed by the inquiry wing or any agency which has been asked to ascertain the fact as to whether there exists prima facie case for proceeding in the matter. Such report is placed before a Bench consisting of not less than three members of the Lokayukta to consider the same under sub□section (2) from the inquiry wing or any agency and after affording an opportunity of being heard to the public servant, may recommend to proceed with one or more of the actions as provided under Clauses (a), (b) or (c) of sub□section (3) to hold departmental action against the public servant. Sub□section (5) prescribes the time schedule of 90 days under which preliminary inquiry has to be concluded. Sub□section (6) provides the action to be taken to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months. Under sub□section(7), notwithstanding anything contained in Section 173 of the Code of Criminal Procedure, 1973, the investigating agency may submit the investigation report to the Lokayukta. Sub□sections (8) and (9) provide the procedure to be followed after investigating agency has submitted its report for taking further action.

21. Chapter VIII provides the power of the Lokayukta. Under Section 25, the power of superintendence and direction over the investigating agency including the State Vigilance and Crime Branch in respect of the matters in so far as they relate to the investigation made by such agency has been entrusted to Lokayukta.

22. Section 27 clarifies that for the purpose of any preliminary inquiry, the inquiry wing of the Lokayukta holds powers of a civil Court, under the Code of Civil Procedure, 1908 and any proceedings before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code, 1860.

23. Section 28 authorise the Lokayukta to conduct any preliminary inquiry or investigation and utilize the services of any officer or organization or investigation agency of the Government.

24. The Act, in fact, is a complete code putting in place the procedure under which the Lokayukta under the Act, 2014 within its territorial jurisdiction holds the authority to adopt a mechanism in reference to public servants of the State of Odisha serving in and outside the State and the public servants under the control of Government of Odisha to inquire into allegations of corruption against the public functionaries and for matters connected therewith or incidental thereto.

25. Mr. Ranjan Kumar Das, Deputy Superintendent of Police, Vigilance Cell Unit, Bhubaneswar was not a person interested but as an informant submitted a complaint against respondent no. 1 (MLA Gopalpur Constituency) to Odisha Lokayukta regarding possession of disproportionate assets and intentionally enriching himself illicitly adopting mal□practices. On the said complaint being received, the appellant directed the Directorate of Vigilance, Cuttack to conduct a preliminary inquiry against respondent no.1 in exercise of his power under Section 20(1) of the Act, 2014 by an order dated 11th December, 2020. Before any action could have been taken by the Directorate of Vigilance in conducting a preliminary inquiry, a writ petition was filed by respondent no.1 before the High Court and on the first motion stage, the High Court, without affording an opportunity of hearing to the appellant, set aside the order dated 11th December, 2020 passed by the appellant for conducting a preliminary inquiry. The action of the Division Bench of the High Court indeed was in violation of the principles of natural justice.

26. The aim to the rule of natural justice is to secure justice or to put it negatively, these rules can operate only in areas not covered by any law validly made. The concept of natural justice, indeed, has undergone a change with the passage of time, but still the time□tested rules, namely, are (i) no one shall be a judge in his own case (Nemo debet essse judex propria causa) and (ii) no decision shall be given against a party without affording him a reasonable opportunity of hearing (audi alteram partem). At the same time, action of the authority must be held in good faith without bias and not arbitrary or unreasonable.

27. In the first instance, the Division Bench of the High Court has committed a manifest error in passing of the order impugned dated 3rd February, 2021 while setting aside the order of the appellant dated 11th December, 2020 to conduct a preliminary inquiry against respondent no.1 in exercise of powers under Section 20(1) of the Act, 2014 which is in violation of the principles of natural justice.

28. Even on merits, the Division Bench has completely overlooked Section 20(1) of the Act, 2014 that empowers the Lokayukta, on receipt of a complaint, obviously after recording satisfaction, in its discretion if intended to proceed and to hold any inquiry, can conduct either a preliminary inquiry against a public servant by its inquiry wing or any other agency to ascertain whether there exists a prima facie case for proceeding in the matter or hold investigation by any agency or authority empowered under any law to investigate whether there exists a prima facie case.

29. So far as the term ‘any agency’ is concerned, it clearly manifests from Section 25 of Chapter VIII which entrusts the power of superintendence to the Lokayukta to exercise in such a manner so as to require any agency, including the State Vigilance and Crime Branch.

30. At the same time, under Section 28, for the purpose of conducting any preliminary inquiry or investigation, it is open for the Lokayukta to utilize the services of any officer or organization or investigation agency of the Government and, in the circumstances, if the appellant in its judicious discretion and on the facts and circumstances of the case, conduct a preliminary inquiry through an agency of the Government of which reference has been made under Section 28 through the Directorate of Vigilance, Cuttack, there appears no legal infirmity being committed by the appellant

in the decision-making process in conducting a preliminary inquiry which, in our view, was within the scope and ambit of Section 20(1) of the Act, 2014 and a manifest error was committed by the Division Bench of the High Court while setting aside the order of the appellant dated 11th December, 2020 to conduct an inquiry against respondent no.1.

31. It is not a case of the respondents that respondent no.1 is not a public servant or the Act, 2014 is not applicable to him or the Lokayukta in its jurisdiction was not competent to conduct a preliminary inquiry under Section 20(1) of the Act, 2014. In the given facts and circumstances, the finding returned by the Division Bench of the High Court under the judgment impugned, in our view, is not legally sustainable.

32. During the course of submissions made by the parties, it was informed that after the stay was granted by this Court of the judgment impugned dated 3rd February, 2021, the appellant has proceeded in conducting further inquiry and actions are being taken after the Directorate of Vigilance has submitted a preliminary inquiry report to the Lokayukta under Section 20(3)(a) to carry out investigation and steps are taken by the Directorate of Vigilance in summitting a report of investigation before the appellant on 7 th June, 2022.

33. Although we may not appreciate the action of the appellant in taking further steps when there was stay of the order impugned passed by this Court, but at the same time, we granted an opportunity to the respondents as well to justify if the action taken by the appellant is not in conformity with the mandate of the Act, 2014, but from the written submissions placed before us, we do not find any valid objection being raised by the respondents which may call upon this Court to interfere in furtherance of the action being taken by the appellant after the preliminary inquiry report was submitted pursuant to order dated 11 th December, 2020. Still we leave it open to respondent no.1, if further action taken by the appellant is not in conformity with law, he is at liberty to initiate proceedings as admissible to him under the law.

34. So far as the objection raised by the respondents regarding the action of conducting preliminary inquiry being bias for the reason that the Deputy Superintendent of Police of the Directorate of Vigilance has submitted a complaint and the appellant directed the Directorate of Vigilance to conduct a preliminary inquiry by an order dated 11th December, 2020, which, in fact, was conducted by a senior officer of the Directorate of Vigliance i.e. Additional Superintendent of Police Vigilance, Mr. P.K. Naik, who submitted a report to the appellant on 28 th May, 2021 is concerned, we are not persuaded with the submission of there being any bias on the part of the Directorate of Vigilance cell in conducting preliminary inquiry for the reason that the Officer who submitted a complaint was simply an informant and not the person interested, at the same time, preliminary inquiry was conducted by a different Officer not connected with author of the complaint, thus the plea of bias was ill-founded. In our view, the principles of bias, even remotely are not attracted in the facts and circumstances of the present case.

35. The rule against bias is an essential component of modern administrative law. The rule against bias ensures a fair procedure by excluding decision-makers who are tainted by bias. Under the rule, actual bias is disqualifying even though it is prohibitively difficult to establish. The basic principle

underlying the time-tested rule is that justice must not only be done but must also appears to be done and this rule has received wide recognition in several decisions of this Court and for our consideration we take note of the judgment of this Court in A.K. Kraipak and others vs. Union of India and others1, wherein in para 15 this Court held as under:

> "15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.
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> (emphasis added) 1 1969 (2) SCC 262

36. The aforesaid view was further considered by a Constitution Bench of this Court in Ashok Kumar Yadav and others vs. State of Haryana and others2 as under:

> "16. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real livelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as

> to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a Welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision□making process of a selection committee constituted for selecting officers to the Indian Forest Service in A.K. Kraipak v. Union of India [(1969) 2 SCC 262]. What happened in this case was that one Naqishbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naqishbund who was a member of the Selection Board was also one of the candidates for 2 1985 (4) SCC 417 selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naqishbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection.

Hegde, J. speaking on behalf of the Court countered the argument that Naqishbund did not take part in the deliberations of the Selection Board when his name was considered, by saying :

> “But then the very fact that he was a member of the Selection Board must have had its own impact on the decision of the Selection Board. Further admittedly he participated in the deliberations of the Selection Board when the claims of his rivals … was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the Selection Board there was a conflict between his interest and duty…. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased…. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct.” This Court emphasised that it was not necessary to establish bias but it was sufficient to

> invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection." (emphasis added)

37. In the instant case, the complaint was made by the Deputy Superintendent of Police (Mr. Ranjan Kumar Das) of the Directorate of Vigilance, who is, directly or indirectly, not concerned with the complaint, he can be said to be an informant to the office of the appellant and that apart, a preliminary inquiry was conducted independently by a senior officer of the Directorate of Vigilance, Additional Superintendent of Police, Mr. P.K. Naik, who submitted his report of the preliminary inquiry on 28 th May, 2021, the question of bias in the instant facts and circumstances does not arise at all and that apart, the Constitution Bench of this Court recently in Mukesh Singh vs. State (Narcotic Branch of Delhi)3, while examining the question as to whether in case investigation is conducted by the police officer who himself is a complainant is the trial stands vitiated and the accused is entitled to acquittal and after examining the scheme of the Code, finally answered the reference as under:

> "13. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:
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> 13.1. (I) That the observations of this Court in Bhagwan Singh v. State of Rajasthan [(1976) 1 SCC 15] , Megha 3 2020 (10) SCC 120 Singh v. State of Haryana [(1996) 11 SCC 709] and State v. Rajangam [(2010) 15 SCC 369] and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal.
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> 13.2. (II) In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case.

Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case□to□case basis. A contrary decision of this Court in Mohan Lal v. State of Punjab [(2018) 17 SCC 627] and any other decision taking a contrary view that the informant cannot be the investigator and in such a

case the accused is entitled to acquittal are not good law and they are specifically overruled." (emphasis added)

38. We are of the considered view that there was no element of bias in conducting a preliminary inquiry in the instant case and the objection raised by the respondents stands overruled.

39. The further objection raised by the respondents is in reference to the locus standi of the appellant in filing appeal in this Court and in support of his submission, counsel placed reliance on the judgments of this Court in National Commission for Women vs. State of Delhi and another4 and M.S. Kazi vs. Muslim Education Society and others5. In our considered view, the submission is wholly bereft of merit for the reason that the action of the appellant initiated pursuant to order dated 11th December, 2020 for conducting a preliminary inquiry in exercise of powers conferred under Section 20(1) of the Act, 2014 was a subject matter of challenge before the High Court at the instance of respondent no.1 and if that is being interfered with and the action of the appellant is being set aside under the impugned judgment dated 3 rd February, 2021, the appellant, indeed, was a person aggrieved and has a locus standi to question the action interfered with by the Division Bench of the High Court and the only remedy available with the appellant is to question the order of the Division Bench of the High Court by filing an special leave petition in this Court under Article 136 of the Constitution.

40. The judgment in National Commission for Women (supra) on which the respondents have placed reliance was a case where in criminal trial, in the first instance held by the trial Court, the 4 2010 (12) SCC 599 5 2016 (9) SCC 263 accused was convicted and on appeal being preferred by him, was later acquitted by the competent Court of jurisdiction and obviously appeal could be preferred against the order of acquittal either by the prosecution i.e. the State Government or the victim, under Section 378 of the Code of Criminal Procedure, 1973, but either of the party has not preferred any appeal and it was the National Commission for Women who approached this Court by filing a special leave petition under Article 136 of the Constitution and this Court still has ventured to examine the appeal preferred by the Commission on merits, but observed that the special leave to appeal at the instance of the appellant – National Commission for Women, is not maintainable and obviously at least the National Commission for Women was not a person aggrieved and it has no locus to object the order passed by the competent court of jurisdiction.

41. At the same time, the judgment of this Court in M.S. Kazi (supra) was a case where the teacher was terminated by a minority institution after conducting a disciplinary inquiry. As the matter travelled to the High Court under Article 226/227 of the Constitution and at this stage the Division Bench of the High Court observed that since the Tribunal is not a party respondent who was the Administrator before whom the dispute inter se between the parties i.e. the teacher and the minority institution was examined, the objection was sustainable, still that objection was turned down by this Court as referred in para 9 and held that it is the person aggrieved who has to pursue his or her remedy available under the law and in the case on hand the person aggrieved invoked the jurisdiction of the Tribunal, but the Tribunal was not a necessary party to the proceedings for the reason that the lis was between teacher and the minority institution and accordingly, this Court held that the High Court has committed an error in dismissing the letters patent appeal on the ground

that it was not maintainable in the absence of Tribunal being a party respondent.

42. Both the judgments relied upon are not even remotely concerned with the facts and circumstances of the present case. To say in other words, if the order of the appellant directing the Directorate of Vigilance to conduct the preliminary inquiry in exercise of power under Section 20(1) of the Act, 2014 dated 11 th December, 2020 has been set aside by the High Court, obviously, the appellant is a person aggrieved and can certainly question the legality/validity of the judgment of the High Court impugned by invoking jurisdiction of this Court under Article 136 of the Constitution.

43. Consequently, the appeals succeed and are accordingly allowed. The judgment of the High Court dated 3 rd February, 2021 and the review order dated 5th April, 2021 are hereby set aside. No costs.

44. Pending application(s), if any, shall stand disposed of.

.....J. (AJAY RASTOGI) .....J. (BELA M. TRIVEDI) NEW DELHI FEBRUARY 23, 2023.