Delhi High Court
Ajaib Singh vs Delhi State Industrial ... on 29 May, 1984
Equivalent citations: 1985 (50) FLR 56, ILR 1984 Delhi 734, 1984 (2) SLJ 502 Delhi
Author: S Chadha
Bench: S Chadha
JUDGMENT S.S. Chadha, J.

(1) This petition under Article 226 of the Constitution of India seeks a declaration that Rule 26 of the Delhi State Industrial Development Corporation Ltd. (Staff Service) Rules, 1978 is ultra vires and unconstitutional and the order dated January 22, 1982 terminating the services of the petitioner with immediate effect without enquiry in terms of the said Rules alleging that the petitioner has been indulging in activities. which are against the security and interest of the Corporation resulting in the loss of confidence by the Management is void.

(2) M/S. Delhi Small Industries Development Corporation Private Ltd., the name of which was subsequently changed to M\s. Delhi State Industrial Development Corporation Limited (hereinafter called the Corpoiation) ig a company, originally incorporated on 15th day of February, 1971 under the Companies Act, 1956. The main objects of the Corporation to be pursued by it on Its incorporation are given in the Memorandum of Association. The object is to aid, counsel, assist, finance, protect and promote the interests of small industries in the Union Territory of Delhi and to provide them with capital, credit, means, resources and technical and managerial assistance for the prosecution of their work and business, to enable them to develop and improve their methods of manufacture, management and marketing and their technique of production. With a view to promote industrial growth, the Corporation is to undertake procurement and distribution of raw materials; to operate upon import licenses/releases orders issued to small scale industries; to establish and maintain trade centres to serve as a clearing house for dissemination of information regarding small scale industries'; to establish and maintain export houses to promote export trade and participate in export trade for the benefit of small scale industries; to undertake and provide marketing facilities to the small scale industries of Delhi; to acquire lands develop them suitably; to effect coordination between large industries and small industries; to promote and operate schemes of the small industries development of Delhi; to guarantee to the National Small Industries Corporation, in respect of moneys to be paid by an entrepreneur to the National Small Industries Corporation; to promote and operate schemes in collaboration with Delhi Administration for the dispersal of the small scale Industries; to enter into arrangement with Government of India, Delhi Administration or any other Government, or States, or Local Authority for the purpose of carrying out the objects of the Corporation; to procure capital for or to provide machinery, equipment and other facilities; to seek for and secure openings for the employment of capital in Delhi and elsewhere and to promote and develop industries of all types including wholly public sector and joint sector undertakings and to improve and develop infrastructure for promotion of industrial complexes in the Union Territory of Delhi. There are other ancillary or incidental objects'. In the nutshell, it is meant to promote industrial growth, and encourage industrial development of small industries.

(3) The share capital of the Corporation was initially Rs. 20 lacs divided into 20,000 equity shares' of Rs. 100.00 each and has now been raised to Rs. 1,000 lacs divided into 10 lacs shares of Rs.

100.00 each. The Memorandum of Association filed under the Companies Act, 1956 was subscribed by the Secretary (Industries) on behalf of the Lt. Governor of Delhi, Under Secretary (Industries), and Deputy Director of Industries (Planning and Technical) of the Delhi Administration. Out of the shares of 5,000 issued initially, 4998 were subscribed by the Lt. Governor and one each by the other subscribers to the Memorandum of Association. According to the advice given by the Bureau of Public Enterprises, the Corporation has now become a Central Government company after acceptance of the shares by the President of India. Clause 4(b) of the Article of Association of the Corporation provides that any invitation to the public to subscribe for any shares in or debentures stock of the company is prohibited.

(4) According to Article 53 all the Directors on the .Board of Directors of the Corporation shall be and are appointed by (he President. The Directors hold office at the pleasure of their appointing authority or until their office become vacant in terms of provisions of Section 283 of the Companies Act, whichever is earlier and they are not liable to retirement by rotation. The Chairman of the Board of Directors is also appointed by the President. The Chairman of the Directors appointed by the President hold office until removal by the President. By virtue of Article 63, the Board of Directors are bound by the directives from the President from time to time. Article 94 provides that Lt. Governor of Delhi will exercise all the administrative' powers with regard to the Corporation on behalf of the President of India as the latter's nominee. The accounts of the Corporation are admitted by chartered accountants appointed by the Government. The amounts advanced to the entrepreneurs are financed by the Government, partly by way of- loans to the Corporation carrying interest and partly as grant-in-aid. There is material on the record which shows various amounts have been received from the Delhi Administration on account of grant-in-aid by the Corporation.

(5) The tests for determining as to when a Corporation can be said to be an instrumentality or agency of the Government have been considered by this High Court and the Supreme Court. In "Ramana Dayaram Shetty v.The International Airport Authority .of India and others", , various tests have been brought about, if the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of the Government. All the shares of the Corporation in this case are held by the President of India. The second test is where the financial assistance of the State is so much as to meet out all the expenditures of the entire Corporation, it would afford some indication of the Corporation being impregnated with Governmental character. This test is also fulfillled as the amounts : required by the Corporation are advanced by the Government either as loan or as grant-in-aid. Another test is the existence of deep and pervasive control and it may afford an indication that the Corporation is a State agency or instrumentality. In case of the Corporation here, the appointment of the Chairman and the Directors on the Board of Directors of the Corporation is by the President. The Board of Directors is hound by the directives from the President from time -to time. This shows that the Corporation is entirely State controlled. Another test :is that if the functions of the Corporation are of public importance and closely related to governmental functions, it would be a relevant factor for classifying the Corporation as an instrumentality or agency of the Government. I have referred to in detail to the objects of the Corporation and it shows that it is meant to promote industrial growth and encourage industrial development which is closely related to governmental functions. These tests are again reiterated by the Supreme Court in "Ajay Hasia V. Khalid Mujib", . As laid down,

there the enquiry has to be not as to how the juristic person is born but why it has been brought into existence. The Corporation may be a statutory Corporation created by a statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an authority within the meaning of Article 12 if it is an instrumentality or agency of the Government the concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company. Shri A. B. Saharya, the learned counsel for the Corporation fairly conceded that in view of the objects of the Corporation disclosed in the Memorandum and Articles of Association of the Corporation and the State control on management and finance and the trend of the decisions it is not possible for him to contend that the Corporation would not be an instrumentality or agency of the State and it is an authority within the meaning of Article 12 of the Constitution. He, however, concedes this for the purposes of amenability of the Corporation to the writ jurisdiction of this Court and not that there is any element of public employment. Before dealing with this aspect, I may notice certain facts.

(6) The Corporation has framed Delhi State Industrial Corporation (Staff Service) Rules, 1978 (.hereinafter referred to as the Rules). These Rules came into force on August 9, 1978. They apply to all employees of the Corporation including those on contract or on deputation in respect of all matters not regulated by the contract or by the terms of the deputation, as the case may be. It is apposite to reproduce Rule 26 here ;

"26.Termination of Service : (I)Not withstanding anything contained in any of the ru

(I)Non availability of the service arising out of prolonged or irregular absence withou

(II)Loss of confidence in the employee.

(III)Possible threat to the Security and the interest of the Corporation. Provided that

(II)The Corporation may at any time and without assigning any reasons, terminate the se

(III)The power to terminate the service shall be exercised by the Appointing Authority

(7) The Rules further provide the Code of Conduct and Discipline. Rule 44 provides that

"44.Misconduct: The term misconduct shall deem to include the followings :

(I)willful insubordination or disobedience, whether or not in combination with others,

(II)willful slowing down in performance of work, whether or not in combination with oth

(III)Unwarranted interference with the work of other employees.

(IV)Theft, fraud or dishonesty in connection with the business or property entrusted wi

(V)Taking or giving bribes in cash or in kind.

(VI)Habitual negligence or neglect of work.

(VII)Habitual late attendance.

(VIII)willful damage or loss to the Corporation's goods or property.

(IX)Habitual absence without leave or absence without proper authorisation for more tha

(X)Holding meeting inside the premises without permission of the Management.

(XI)willful act or commission on the part of an employer which is derogatory to the ima

(XII)Furnishing at the time of appointment, false or misleading information or willfull

(XIII)Abetment of or attempt to commit any of the above acts of miscondtfct.

(XIV)Riotous or disorderly behavior inside or outside the premises of the Corporation o

(XV)Breach of any rule or proviso of these regulations or any other rules as may be pre

(XVI)Striking work or inciting others to strike work in contravention of any law.

(XVII)Distribution or exhibition of any handbills, pamphlets or posters in and outside

Penalties are provided in Rule 45. The procedure for imposing the punishments is provided in Rule 46. The power of suspension is contained in Rule 47. The issue of the charge-sheet is provided in Rule 48. The order of suspension has to be communicated to an employee in writing and has to be followed as soon as by a charge-sheet against the employee unless the services of such employee are terminated under Rule 26. The. management of the Corporation cannot impose on any employee any penalty other than censure, fine or stoppage of increment without future effect for any of the misconducts mentioned at serial No. (i) to (v) quoted above, without communication to the employee, the charge or charges in writing and without giving him a reasonable opportunity for defending himself against such charge or charges and/or to show cause against the action proposed to be taken against him. The management may itself enquire into the charges reported against the employee or if it considers necessary may appoint enquiry Committee or Enquiry Officer for the purpose.

(8) The petitioner was appointed as Junior Assistant in the year 1974 by the Corporation. He was promoted as Cashier in 1976 and further promoted as Senior Cashier in May, 1981. The petitioner was elected as the General Secretary in 1977, 1979-80 and again 1981-82 of the D.S.I.D.C. Employees Union which is a registered body, duly recognised by the Corporation. At the time of impugned termination order dated January 22, 1982, he was working on the post of Assistant Grade I (Ministerial) in Overseas and Assistant Division. The impugned order says that "it has been found that Shri Ajaib Singh has been indulging in activities which are against the security and interest of the Corporation resulting in less of confidence in him by the Management". The order of termination is passed in exercise of the powers under Rule 26(i), (ii) and (iii)..

(9) In the counter-affidavit, it is averred that the termination is substantiated by the fact that the petitioner along with Shri K. S. Bisht and Shri K. S. Negi had been indulging in acts of lawlessness,

intimidating the senior officers, threatening them with dire consequences and even assaulting them to get their demands conceded to. It is further pleaded that the petitioner and his associates had been interfering in the administrative work of the management whenever there are transfers, postings or promotions and they had been indulging in intimidation and threats in order to suit their ends, hurling threats and abuses to the officers was the order of the day. The counter-affidavit then refers to the series of incidents which took place. It is stated that on September 24, 1980 when the aforesaid persons resorted to unlawful acts, abused Dy-. Commissioner of Police on deputation with the Corporation and physically dragged him out of the office. The Managing Director of the Corporation was also abused threatened .and an attempt is alleged to have been made to assault him as well An Fir dated September 24, 1980 was lodged and the case under Section 3421506 Indian Penal Code . was registered and the petitioner and other accused persons are standing trial. Another incident of July, 1981 is then narrated when the petitioner and his other associates entered the room of former officer on Special Duty and abused, threatened and physically assaulted him. Another incident of first week of November, 1980 is also mentioned when the petitioner along with other office-bearer of the union entered the room of the Managing Director and threatened him to accept the illegal and unlawful demands and intimidated him. Yet another incident of January 19, 1982 is mentioned when the Managing Director was alleged to have been gheraoed and the petitioner and other office-bearers forcibly prevented the Managing Director from discharging his official duties.

(10) The main question for consideration is whether in. fact the appointment of the petitioner is purely contractual as is contended and the Corporation has a right to terminate his services in accordance with the terms of the contract including Rule 26 which is applicable to all employees of the Corporation including those on contract. An employee in a case of master and servant contractual relationship, enforces breach of the contractual term. The remedy for illegal termination in such cases of contractual relationship of master and servant is damages because personal contract of service is not capable of being enforced but the case of public employment stands at a different footing. I have already set out in detail the objects of the Corporation to be pursued to come to the conclusion that the Corporation is an agency or instrumentality of .the State performing an important element of the Governmental function, namely, industrial development and growth. The interest of small scale industries in the Union Territory of Delhi is promoted and this affects the people as an organized community. The Corporation is performing its duties and pursuing its objects for the benefit of the public and not for any private profit. The grant-in-aids are paid by the Government to the Corporation as also the loans for financing its activities. The degree of the control by the State is deep and pervasive. The Corporation is entrusted with certain duties in public interest. The employees of such a Corporation would be in public employment.

(11) In "Sukhdev Siagh v. Bhagat Ram", , the question arose as to the rules and regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation as having the force of law. It was ruled to use the words of Ray, C.J. that voice is that of the State and hands are also of the State and thus the said three juristic entities are instrumentality or agency of the State. It was then held that the employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions and that they are also entitled to claim protection of Articles 14 and 16 of the Constitution. Mathew, J: who have his concurring judgment expressed that

even assuming that the regulations have no force of law, his Lordship felt that since the employment under those Corporations is public employment, an employee would get a status which would enable him to get declaration for continuance in service if he was dismissed or discharged contrary to the regulations. His Lordship also expressed that employment under public Corporations of the nature under consideration in that case is public employment and, therefore, the employee should have the protection which appertains to public employment.

(12) "U.P. Warehousing Corporation v. Vijay -Narayan", related to a statutory Corporation and the writ petition was by an employee for wrongful dismissal on the ground that it was violative of the principles of l natural justice, inasmuch as he had not been given an opportunity to cross-examine the witnesses and to establish his innocence. Chinnappa. Reddy, J. gave a concurring note in which the question of public employment was dealt with in these words: "……THEGovernment, its agencies and instrumentalities, Corporations set up by the Government under statutes and Corporations incorporated under the Companies Act but owned by the Government have thus become the biggest employers in the country. There is no good reason why, if, Government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealings with the employee:., the Corporations set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and security, to confine the applicability of the equality clauses of the Constitution, in relation to matters of employment, strictly to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a Court to enforce a contract of employment and denies him the protection of Arts. 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and employees- in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country's economy. In growing realisation of the importance of employment in the public sector, Parliament and the Legislatures of the States have declared persons in the service of local authorities, Government companies and statutory corporations as public servants and extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the indepen' dence and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants."

These observations enjoyed the affirmation of a three Jud- ges' Bench of the Supreme Court in "Som Parkash Lekhi v. Union of India", Air 1981 S.C. 292 (5).

(13) The question was considered by a Division Bench of this Court in C.W.P. 118180 "Raghunandan Prasad v. Institute for Physically Handicapped and Others", decided on April 4. 1984 (6). It was held that public employment has become for all purposes a subject of administrative law. The public employment is so mixed in it that it ceases to be a contractual employment. The cardinal development in this branch of law is that in public employment the employer is required to observe the principles of natural justice. The State must be fair, just and reasonable, because, in fact the State is the employer. Fairness demands that the employee must be heard. In that case the

termination order gave no reason as to why the Director of the Institute had been dismissed. It rested itself on the contractual term of three months' notice or three months' pay in lieu there of. It was expressed that the State is the employer and it is for the Court, having regard to the course of proceedings, to decide whether there has been a result, reached by fair method, such as the servant must have legitimately expected to receive at the hands of the master when he joins the service. If the Court finds that it is a fair decision, the servant shall be refused relief. If-there has been no fair decision it would, no doubt, be right to quash the dismissal order. It was ruled : - "The difficulties came from the historical development of the law of master and servant It has built up not logically but empirically. It is this empirical development which has so often baffled efforts to systematise the law. A contract of service in the beginning was in a high degree personal SSd it constituted a personal and private relationship between the parties. There was no public element in this relationship. Then came the public sector and big corporations. The public element ai once emerged. The personal element became an impersonal bond of union. The individual who was previously nonpublic assumed a public character. The private rights and duties were replaced by status. A new test was propounded which focussed upon the common quality which unites those within the class concerned and asks whether the quality is essentially impersonal or essentially personal. This was a new trend in public law.

In public law on the purported exercise of power of dismissal can be declared to be ineffective and inoperative. What the Court does is that it quashes a de facto dismissal order which was in law a nullity. The present case can be decided on the simple ground that there has been a violation of natural justice. Three features of natural justice stand out : (1) a right to be heard by an unbiased tribunal; (2) to have notice of charges of misconduct; (3) the right to be heard in answer to those charges. These three features constitute the irreducible minimum of the requirements of natural justice. Meggary, J. called natural justice 'a distillate of our process of law, a term we find so often; on American lips [John vs. Rees (1970) I Ch. 345, 399]. Our Constitution does not guarantee right to work, it is true. But it does guarantee that no one shall be deprived of his livelihood under the State, except in accordance with the procedure established by law. There is a perpetual quest for security. The law therefore has justified the act of dismissal in public employment. It is now a juristic act. (Tony Honors Quest for Security, Hamlyn Lects.). "The public element in the law of employment brought in legislation and judgments law. The public corporations and other 'authorities' which are emanations of the State came into existence. In their veins life flows from the corridors of power. These had to be subjected to the rule of law. Their employees needed protection so that these corporations do not become 'citudels of patronage and arbitrary action'. (Vijay Narain Vajpayee supra at p 469)."

(14) Mr. A. B. Saharya questioned the authority of the decision in Raghunandan Prasad's case (supra) for the reason that it has not noticed some earlier Full Bench decisions of this Court, namely, "Ved Prakash Malhotra v. State Bank of India", (7), approved by the Full Bench in "H. M. Joshi v. Reserve Bank of India", (8), "Indian Institute of Technology v. Mangat Singh", 2nd 1973 (II) Delhi 6 (9) and "Dr. Mohd. Khan Durranyv. The Principal (Shri Tuisi Ram) Shivaji College", I.E.R. 1970 (II) Delhi 914 (10). The view taken in those cases is that the question whether a servant of the 'State' (used in the sense of Article 12) or of statutory authority can enforce- his rights against the employer under Article 226 depends upon whether he is a contractual employee seeking to enforce a

merely contractual right or whether the particular right is statutory or constitutional. I cannot accede to this argument of the counsel. Raghunandan Prasad's case was referred to the larger Bench because of some conflict of judicial opinion in this Court. "A. M. Aggarwal v. Union of India", 1981 (2) S.L.R. 407 was a case of an employee of the Steel Authority of India. A Division Bench of this Court held that the employment was contractual and since the contract of employment was terminated in accordance with the conditions of service the question of natural justice does not arise. The weakness of this decision is that it followed the Full Bench case of "Dr. Y. P. Gupta v. Union of India", 1975 (2) S.L.R. 560 (II) and also based on V. P. Malbotra's case (supra) and Y. P. Gupta's appeal was allowed by the Supreme Court and the judgment of the five Judges @f this Court was set aside. The case is reported as "P. K. Ramachandra lyer v. Union of India", . All these cases were noticed by the Division 'Bench and the view was expressed that the authority of V. P. Malhotra on which subsequent decisions of this Court referred to by the counsel were based has been completely shaken and no longer good law in view of the three Supreme Court decisions in Ajay Hasia (suphi), Vijay Narain VaJpayee (supra and Dr. Y. P. Gupta (supra). 1. am in respectful agreement.

(15) The Corporation is an instrumentality or agency of the State and it is an authority within meaning of Article 12 of the Constitution. The State is the employer. The employees would be in public employment. It is in this light that I now proceed to determine the constitutional validity of the impugned Rule 26. An elaborate procedure has been provided in the Rules 45 to 51 noticed earlier. This is in consonance with the rule of natural justice in dealing with the cases of misconduct of an employee. The principles of natural justice include the right of a person whose civil rights are affected by the State action of having the notice of the case he has to meet. He must have a reasonable opportunity of representing against and/or of being heard in his .defense. The hearing must be by an unbiased/impartial authority. The authority must act reasonably and not arbitrarily. These safeguards are absent in the archaic power conferred on the Management in Rule 26 to terminate the services of the employees on account of three specified eventualities. So far as the ground of non-availability of the service arising out of prolonged or irregular absence is concerned, it is also a misconduct under Rule 44. There is a clear demonstration of discrimination between one employee and another similarly placed, which cannot be reasonably explained as to why resort to one cut of the two is made. The Rule is discriminatory. As the impugned action is not under Rule 26(i) though erroneously mentioned in the impugned order, I wish to say no more. Even if there may be no discrimination under Rule 26(ii) and (iii), the conditions of termination 6f the service of an employee are So unreasonable and arbitrary that they violate Article 14 of the Constitution. Article 14 series equal protection to employees in public employment and Government servants. Government servants have an additional protection under Article 311(2)of the Constitution. The principle of reasonableness is an essential element of equality and thus the procedure contemplated by Rule 26 must answer to the test of reasonableness in order to be in conformity with Article 14, What is the test of reasonableness was laid down by the Supreme Court in "M/s. Kasturi Lal v. State of J. & K: noticing the earlier decisions - "The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by this Court in Maneka Gandhi v. Union of India. clearly demonstrates that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty

ideal of social and economic justice which inspires and animates the Directive Principles. It has been laid down by this Court in R. P. Royappa v. State of Tamil Nadu, and Maneka Gandhi's case (supra) that Article 14 strikes at arbitraries Hi State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is projected by this article, it must characterise every governmental action, whether it be under the authority of law or in exercise of executive power without making of low. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable. Similarly Art. 21 in the full plenitude of its activist magnitude as discovered by Maneka Gandhi's case, insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and Just....."

In an earlier case "State of A.P. v. Nalla Rajja Reddy", it was observed that official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The Sate action must be "right and Just and fair". In public employment the employer is required to observe principles of natural Justice, because in fact the State is the employer. Any rule which does not provide a right to the employee of being heard before termination of his service under the Corporation which is a State, would be hit by Article 14 of the Constitution and .thus ultra vires. In A jay Hasia v. Khalid Mujib (supra), the Supreme Court re-stated the law : ".....ITmust therefore now be taken to be well settled that what Article 14 strikes at. is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a Judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugn a legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Art. 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

(16) Fairness founded on reasons is the essence of the guarantee as enshrined in Articles 14 and 16(1) of the Constitution. The common law concept of employment which is a master and servant only has transformed into public employment "to bring it in tune with vastly changed and changing socio economic conditions and more of the day, much of this old antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment to whom the Constitutional protection of Articles 14, 15, 16 and 311 of the Constitution" (See Manager. Govt. Press v. D.B. Balliappa", 1979(11 S.L.R. 351(15). The impugned Rule 26 gives power to the Management to terminate the service of employee on account of loss of confidence in the employee or possible threat to the security and interest of the Corporation. It is an act of

dismissal in public employment. In public employment, the employer is required to observe the principles of natural justice.

(17) Rules 43 to 51 provide a reasonable opportunity of being heard before an employee is dismissed, removed or reduced in rank: or any other major penalty is imposed. The impugned Rule 26 completely abrogates the principles of natural justice embodied in Rules 43 to 51. Rule 26 cannot be equated with the principle underlying in proviso to Article 311(2) of the Constitution which engrafts three exceptions. The third exception is where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry. A dismissal of a Government servant without giving him an opportunity of hearing may be made in the interest of the security of the State. What impugned Rule 26 says is that the termination of the services of an employee can be made on account of "possible threat to the security and the interest of the Corporation". The interest of the security of State is paramount and for this reason the framers of the Constitution receive that power. Even in those cases the Court is entitled to enquire whether conditions precedent to the formation of such satisfaction have any factual basis, whether the executive has acted in good faith and whether the existence of the relevant materials upon which the validity of exercise of executive power is predicated are present. In the impugned Rule, it is not the interest of the security of the State but only a possible threat to the security and the interest of the Corporation. In this context, the Corporation in this case cannot be equated with the interest of the security of the State. As the impugned Rule does not contain or in-built rules of natural justice, it violates Article 14 of the Constitution and is ultra vires.

(18) Rules 26 cannot be intra vires merely because the exercise of the power is conditioned by the expression of the satisfaction and the expediency to terminate the services of an employes. The power may be guided discretion in the sense that the Management has to express its considered opinion and then record its satisfaction. A power which excludes the rule of natural justice in the matter of termination of service of an employee in public employment is itself bad, even though the exercise of power is conditioned.

(19) In view of my finding that the impugned Rule 26 is ultra vires of Article 14 of the Constitution, I am not going into the question that the misconduct alleged in the counter-affidavit amounts to punishment as the power of termination of services has been exercise under Rule 26 and the Rule is declared ultra vires, the consequential effect is that the impugned order is also quashed.

(20) For the above reasons, the writ petition is allowed. Rule 26 of the Delhi State Industrial Development Corporation Ltd. (Staff Service) Rules, 1978 is declared ultra vires and is struck down. The consequential effect is that the impugned order dated January 22, 1982 is also quashed. On the facts and circumstances, I leave the parties to bear their own costs.