Trustee Ahmedabad Jesuits School ... vs Biju Jose Vadaken & 3 on 19 September, 2016

Author: J.B.Pardiwala

Bench: J.B.Pardiwala

C/SCA/1069/2016 CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 1069 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or

any order made thereunder ?

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TRUSTEE AHMEDABAD JESUITS SCHOOL SOCIETY & 1....Petitioner(s)

Versus

BIJU JOSE VADAKEN & 3....Respondent(s)

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Appearance:
MS ANUJA S NANAVATI, ADVOCATE for the Petitioner(s) No. 1 - 2
MS VACHA DESAI, AGP for the Respondent(s) No. 4
PARTY-IN-PERSON, CAVEATOR for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2 - 3

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 19/09/2016

CAV JUDGMENT

HC-NIC Page 1 of 43 Created On Wed Sep 21 05:17:57 IST 2016 1 By this application under Article 227 of the Constitution of India, the petitioner, a Society, seeks to challenge the legality and validity of the order dated 9th December 2015 passed by the Gujarat Educational Institution Services Tribunal at Ahmedabad in the new Appeal No.339 of 2014, by which the Tribunal partly allowed the appeal filed by the respondent No.1 and quashed the order of dismissal from service dated 9th December 2013 passed by the petitioner - society against the respondent No.1.

2 The case of the petitioner may be summarised as under:

2.1 The respondent No.1 was appointed as the 'Shikshan Sahayak' in the Higher Secondary Section of the petitioner No.2 - school vide the appointment letter dated 13th February 2006. The appointment letter was signed by Father M.G. Raj jointly with the Principal of the petitioner No.2 - school.

2.2 The respondent No.1, while in service, was served with a show cause notice dated 1st April 2013 under Section 36(1) of the Gujarat Secondary Education Act, 1972 calling upon him to show cause why he should not be dismissed as a 'Teacher' on the following charges:

"1 That you had sent an objectionable anonymous shall mail in the name of some ex-teacher against the school, principal and Vice Principal in September 2011. That the Institution filed a criminal complaint with the concerned police station, wherein after investigation you were found guilty by the police authorities. That the Institution did not pursue the complaint against you on a sympathetic consideration on your tendering an apology on 15.10.2011, to the Institution.

2 That a student of Class XII A student gave a written complaint on 17.08.2012, stating that you were instigating students against the school. That it was also reported in writing by a student on 27.08.2012, that when the existence of such letter / complaint came to your knowledge, you forced the student to change his version and state that the student was not the author of such a letter / complaint.

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3 That your objectionable actions have been reported by the students to their parents and hence, one parent has given a written complaint against you on 01.10.2012, complaining that you were causing mental harassment to their ward.

4 That the staff members of the Institution had made written complaints about you on 15.07.2011, 13.09.2012, 04.12.2012, 24.12.2012 and 03.01.2013. That you had also misbehaved with our supervisor Mrs. Laxi Iyer in the open forum on 22.12.2012.

5 That few days later i.e. 03.01.2013, it was reported that you fought with Mr. Ravi Pillai in the staff room, threatened him and insulted him.

6 That in yet another incident, it was observed that you were forcing students to give a feed back during the classroom study time, which was not required and was sheer waster of time. That such an action on your part indirectly involves children into unwarranted person score setting tactics and is extremely unbecoming of a teacher.

7 That the Institution has noticed that despite numerous opportunities given to you to improve your conduct towards the school, its staff and its students, you have continued to misbehave and cause unnecessary hardship in the smooth functioning of Institution, which in turn is likely to malign the reputation of the Institution.

8 That were earlier also issued a show□cause notice dated 21.01.2013, in respect of the incident of your asking for feedback from the students during study hours. That you have given a response to the said notice on 23.01.2013, which seems to be a lame excuse and has not been found satisfactory by the Institution."

2.3 The petitioner found the reply to the show cause notice not convincing and accordingly decided to initiate a regular departmental inquiry. The Inquiry Officer, on conclusion of the inquiry, held the charges to be established. Some of the findings recorded by the Inquiry Officer are as under:

> "13 On a proper appreciation of depositions of all the witnesses and the documents produced by the management and more particularly, considering the depositions of the Principal of the School, Ms. Laxmi Iyer, Ms. Preetha Pillai, Ms. Nandini Majmudar, Mr. Ravi Pillai and Mr. HC-NIC Page 3 of 43 Created On Wed Sep 21 05:17:57 IST 2016 Ashwin Mehta, it is proved beyond any reasonable doubt that the delinquent employee is guilty of the charges levelled against him.
>
> 14 That school management has also examined other independent witnesses like the parents of the school. One parent Mr. Shailesh

Maheshwari has given a statement on 22.10.2013 wherein, he has alleged that the delinquent employee is favouring particular group of the students in the practical examination. In the same line other witness like Dr. Raj shah has given the similar deposition. When the parents of the students have given statements that the delinquent employee, I have no reason to disbelieve their statement and more particularly when they are not cross examined by the delinquent employee.

15 The statements of all the witnesses were given to the delinquent employee. The delinquent employee has been asked to cross examine all the witnesses which he has refused to do so. When there is nothing contrary to the statement given by the witnesses and when the delinquent employee has also not given his defence statement, I am left with no other alternative but to accept the deposition given by all the witnesses. There is enough documentary evidences which prove that the delinquent employee is guilty of the charges levelled against him. I am not resisting myself from referring to the email produced by the witnesses wherein the delinquent employee has made serious charges against the Principal of the school and others. Not only that but the delinquent employee has also admitted that the email dated 15.9.2011 is sent by him and for that he has given a written apology on 15.10.2011. The copy of email dated 15.9.2011 and a written apology dated 15.10.2011 if read together, it is proved beyond any reasonable doubt that the behavior of the delinquent employee is not befitting of a teacher of higher secondary school.

16 On the basis of the statements of the parents and also the statements of the students of the school, I hold that the delinquent employee is guilty of the charges levelled against him and that the delinquent employee demonstrates a threat to the students. I state that the parents and the students have no reason to give a false statement against the delinquent employee. Even the delinquent employee has failed to examine these witnesses. These are independent witnesses and when there is no contradictions in their statements, I have to accept the words of the parents and reach the conclusion that the delinquent employee is guilty of the charges. Similarly on the basis of all the witnesses that include even the statement of the parents, I hold that the delinquent employee has committed a breach of condition No.5(8) of Schedule - 2 of Regulation 27(A) of Gujarat Secondary Education Regulation, 1974.

17 On the bare perusal of the statement by lady supervisor, Ms. Laxmi Iyer, Mr. Ravi Pillai and the statement of the Principal of the school, I have HC-NIC Page 4 of 43 Created On Wed Sep 21 05:17:57 IST 2016 reached the conclusion that the delinquent employee is guilty of the charges levelled against him and that the delinquent employee has

misbehaved with the lady supervisor Ms. Laxmi Yer and Mr. Ravi Pillai.

18 From the above, I hold that the management has successfully proved that the delinquent employee is guilty of the charges levelled against him and hence, I hold the delinquent employee guilty of all the charges levelled again him."

2.4 The respondent No.1 was served with a second show cause notice dated 21st November 2013 along with a copy of the inquiry report calling upon him to show cause why he should not be dismissed from the service.

2.5 It appears that the petitioner No.1 - society, vide its resolution dated 18th November 2013 authorised Father M.G. Raj to issue the show cause notice. Later on, vide the resolution dated 9th December 2013 passed by the Society, Father M.G. Raj was authorised to pass an order dismissing the respondent No.1 from the service. The respondent No.1 was accordingly dismissed from service.

2.6 The respondent No.1 challenged the order of dismissal before the Gujarat Educational Institution Services Tribunal by filing the appeal No.339 of 2014. The Tribunal thought fit to partly allow the appeal directing the petitioner - Society to issue a fresh show cause notice and initiate a de novo departmental inquiry.

2.7 The Tribunal, while partly allowing the appeal filed by the respondent No.1 herein, took into consideration the following:

(1) The departmental chargesheet in the form of a show cause notice issued to the respondent No.1 was defective as the same contained the expression "dismissal" which suggested that the HC-NIC Page 5 of 43 Created On Wed Sep 21 05:17:57 IST 2016 inquiry was initiated with a closed and prejudged mind.

(2) The impugned order of dismissal was passed by the authority who had no power or jurisdiction. To put it in other words, according to the Tribunal, Father M.G. Raj was not the appointing authority of the respondent No.1, and therefore, he could not have passed the order of dismissal.

(3) The first show cause notice containing the charges should have been issued by the management. According to the Tribunal, the Principal could not have issued such a show cause notice containing the charges.

2.8 The petitioner, feeling dissatisfied with the impugned order passed by the Tribunal, has come up with this application under Article

227 of the Constitution of India, invoking the supervisory jurisdiction of this Court.

3 Mr. S.I. Nanavati, the learned senior advocate appearing for the petitioner vehemently submitted that the impugned order dated 9th December 2015 passed by the Tribunal is erroneous and contrary to the statutory provisions of the Gujarat Secondary Education Act, 1972. He submitted that the Tribunal failed to consider the principle contention raised on behalf of the management that the school being a minority educational institute is exempted from the various provisions of the Act, 1972 and the Regulations, 1974 respectively. Mr. Nanavati submitted that the Tribunal committed a serious error in holding that the show cause notice issued by the Society to the respondent No.1 was defective as in the same the punishment of dismissal was proposed. The learned counsel would submit that merely because the proposed punishment is HC-NIC Page 6 of 43 Created On Wed Sep 21 05:17:57 IST 2016 stated in the chargesheet, the same by itself will not make it defective so as to render the proceedings non□est. 4 Mr. Nanavati, the learned senior advocate further submitted that the Tribunal committed a serious error in holding that the order of dismissal could not have been passed by Father M.G. Raj as he was not the appointing authority of the respondent No.1. Mr. Nanavati submitted that Father M.G. Raj was authorised by the management to appoint and dismiss the respondent No.1. He would submit that the concept that only the appointing authority has the power to dismiss, is applicable only in the case of the government employees and not to the minority institution like the petitioner.

5 Mr. Nanavati submitted that the impugned order being erroneous in law, the same deserves to be quashed and set aside.

6 On other hand, the respondent No.1 appearing in person has vehemently opposed this petition and submitted that no error, not to speak of any error of law could be said to have been committed by the Tribunal in passing the impugned order. The respondent No.1 submitted that the petitioner, not only acted with malice, but has harassed and victimised him like anything. He would submit that Father M.G. Raj could not have passed the order of dismissal. The respondent No.1 has placed reliance on the following averments made in the affidavit□in□reply filed by him:

> "2 d) i) The respondent no.1 submits that the main crux of the impugned judgment and order dated 09.12.2015 of the Ld. Tribunal was that the dismissal order dated 09.12.2013 dismissing the present applicant was not passed by the appropriate authority and thus, the dismissal order dated 09.12.2013 was set aside by the Hon'ble Tribunal by its judgment and order dated 09.12.2015.

(ii) That the respondent no.1 states that as per the petition filed by the petitioner no.1 and 2, the Pet. No.1 Society, vide its resolution dated 18.11.2013 authorised Father M.G. Raj to issue show cause notice to the respondent no.1 employee herein with proposed punishment of dismissal order. That the resolution dated 18.11.2013 has been annexed along with the petition as Annexure G in SCA 1069/2016.

(iii) That the dismissal order dated 09.12.2013 and suspension order dated 06.06.2013 was issued by Father M.G. Raj against respondent No.1 herein.

(iv) That the Tribunal set aside the dismissal order dated 09.12.2013 relying upon the provisions of Gujarat Secondary Education Act, 1972 and Gujarat Secondary Regulations 1974 on the ground that the termination letter was signed by the authority other than the authority who had appointed the respondent no.1 employee and therefore, the whole inquiry is vitiated.

(v) That the petitioner no.1 & 2 herein alleged that the aforesaid Act and Rules are not applicable to them in as much as it is a minority educational institution which is exempted from majority of the provisions of the Act and the regulations.

(vi) That the petitioners further submitted that they are governed by the trust deed dated 05□11□56 which, vide Rule 11, allows the Managing Board of petitioner no.1 to delegate any of its functions. That the Managing Board had delegated its function vide its resolution dated 18.11.2013, by authorizing Father M.G. Raj to issue show cause notice to the respondent no.1 employee herein.

e) The respondent no.1 submits that the petitioner has not annexed the copy of the Trust Deed in SCA 1069/2016 neither has it made any averment in this regard in the petition filed by it. That the respondent no.1 states that in absence of any averment in the petition regarding the trust deed dated 05□11□56 of the petitioner no.1 trust and more particularly, such contention in absence of any pleading to support it ought not to have been raised without prior notice to the respondent no.1 herein or making suitable amendment in this regard. That the respondent no.1 did not get the chance to controvert the claims made by petitioners herein which did not form part of the memo of petition which is evidence from the reading of judgment dated 22□01□2016 given in SCA 1069/2016.

f) i) That the prejudice caused to the respondent no.1 herein due to which act of petitioner is that, it obtained interim relief, vide impugned order dated 22.01.2016 by placing reliance on Rule 11 of the Trust Deed which respondent no.1 could not controvert properly. That a closer perusal HC-NIC Page 8 of 43 Created On Wed Sep 21 05:17:57 IST 2016 of Rule 11 of the trust deed dated 05□11□56 would reveal that it in fact militates and goes against the case of the petitioners. That for the sake of ready reference, the respondent no.1 quote the relevant portion of the impugned order dated 22.1.2016 in SCA No.1069/2016 which is as follows:

"It is further urged that this was so done by virtue of rules and regulations; particularly Rule 11 of the Rules & Regulations of the petitioner No.1 - Society which authorizes the Managing Director Board to delegate any or all those powers to the Heads of the Institutions which are under the control and management of the Society".

ii) The respondent no.1 is annexing herewith the copy of the Trust Deed of the respondent Trust Annexure as M□8. If one has reading of rule 11 of the same Trust Deed which is given below:

Rule 11 the Managing Board shall have the entire control and management of the Society and its Institutions. It shall have the power:

a)...

b)...

c) to control the education and maintenance of discipline; to lay down the policy in all educational and business matters;

to introduce and sanction textbooks; to sanction the rates of fees and reductions; to frame conditions of service; to consider and sanction appointments of teachers and other employees; to fix their salaries, to give promotions; to award punishments; to grant leave and extension of service to teachers and other employees both temporary and permanent; to appoint heads of different institutions of the society and to transfer teachers and other employees from one position to another or from one institution to another institution of the society.

It may, however, delegate any or all those powers to the heads of the institutions.

In all such matters the decision of the Managing Board shall be considered as final

d).....

iii) Now it is pertinent to note that Fr. M.G. Raj was never a trustees at relevant point of time which is clear from the General Board meeting and executive committee resolution which is annexed a M□09 herewith. It is HC-NIC Page 9 of 43 Created On Wed Sep 21 05:17:57 IST 2016 accepted on oath before the Deputy Charity Commissioner and Charity Commissioner by the same trustees and the principal (petitioner herein) admitting their mistake that Fr. M.G. Raj is not the trustee and the rubber stamp of the trust is put by mistake. And further states that they have delegated the power to Fr. M.G. Raj as the authority of trust. The copy of affidavit filed before the Deputy Charity Commissioner is annexed as N□15 (colly) page no.424, 425 and the copy of affidavit filed before the court of Charity Commissioner Ahmedabad, dated 03□10□2015 is annexed as N□15 (colly) page no.529□534. Now on inquiry with the trust officer and through RTI it was found there is no change report filed informing the Dep. Charity Commissioner about the resolution passed by the trust under section 22 of the Bombay Public Trust Act authorizing Fr. M.G. Raj to execute the documents as Trustee / Managing Trustee / Treasurer / Secretary. Section 22 of the BPT Act makes it mandatory to file change report within ninety days of any changes in trustee or death of the trustee. But such change report authorizing Fr. M.G. Raj were never ever filed before the Deputy Charity Commissioner office, Ahmedabad. The RTI reply is annexed as N□15 (colly) page no.426□427.

g) That it is an admitted position that Fr. M.G. Raj was not all trustees of the trust and neither head of the institution and hence such delegation of power is totally illegal. That Father M.G. Raj is holding the post of Managing Trustee / Trustee / Treasurer / Secretary illegally which cannot by any stretch of imagination be said to be a head of the institution. That the respondent no.1 further states that it is an admitted position of law that the trustees cannot delegate their functions except in the manner provided in the trust deed itself.

h) That the trust deed dated 05□11□56 which is binding on the petitioners itself states that the Board can delegate its functions only to the head of the institutions. That therefore, the petitioners ought to have established that Father M.G. Raj was head of the institution. That the respondent no.1 has filed this reply as it could not bring this aspect to the notice of the Hon'ble Court at the time of hearing as such an averment was neither made in the petition nor was a copy of the trust deed dated 05□11□'56 even annexed along with the petition. Hence it is necessary to file this reply to bring the correct facts on record before the Hon'ble Court through my preliminary objection."

> "4 Para □2 (a) : The contentions in this para, is denied. In reply to this para, it is submitted that Shri M.G. Raj as well as Principal who has signed the appointment letter dated 13th February 2006 of resp. no.1 is in

fact fraud and forgery done with respondent no.1 as Shri M.G. Raj was never a trustee nor member of the governing body which is clear from the PTR records of the petitioner no.1 trust Annexure as N□1.

HC-NIC Page 10 of 43 Created On Wed Sep 21 05:17:57 IST 2016 Para □ 2 (b) : The contentions in this para, is denied. As per the Rojkam dated 4th June 2013, the day of beginning of first sitting of inquiry, it states that show cause notice is dated 4th April 2013. It is admitted fact, which is admitted by petitioners if one has reading of the judgment of Education Tribunal dated 09□12□2015 on page no.20, in the 8th line annexed herewith memo of complaint dated 3rd April 2013 with malafide intention which is evident from the Rojkam dated 4th June 2013 which is annexed as N□2. If one has look at page no.252, the petitioner trust no.1 has framed charges based on Gujarat Secondary Education Regulation 1974 under regulation 27 to which they are seeking exemption now. The show cause notice dated 1st April 2013 is itself vague as it did not accompany documentary evidences though it was asked for by respondent no.1 by the letter dated 23□01□2013 annexed as N□3 before inquiry begun and a letter dated 15th June 2013 which is annexed as N□4 post inquiry had begun.

Para - 2(c): The contentions in this para, is denied. In reply to this para, it is submitted that it is proved beyond doubt that such charges are concocted at the behest of Rev. Fr. M.G. Raj and Rev. Fr. Fernand Durai as the evidences were not on record with the petitioners. If at all it was there, it would have been supplied to the respondents no.1 where it was asked for so that he could have replied to the show cause notice properly defending himself which was served upon. Such act is nothing but violation of principles of natural justice.

Para 2(d) : The contentions in this para, is denied. It is further submitted that the whole departmental inquiry was a stage set drama with a malafide intent to kick me out of my livelihood. It is submitted tht the inquiry officer Rev. Fr. Robert Arokiasami is the trustee of the trust "The Loyola Hall Academic Society" which collects donations and fees from the students of the school. The PTR record of "The Loyola Hall Academic Society" is annexed as N□5 (pg. 260 - 266). The leaflet for donation asked by the school in name of above trust is annexed as N□6. The respondent no.1 has put in 32 objections during the course of inquiry proceedings which were never taken on record which is evident on page no.269□271 from the reply dated 1st December 2013 annexed as N□7 given to the second show cause notice. The reply dated 1st December 2013 also contained two copies of the DVD□1 and DAD□2 which contains AUDIO/VIDEO of entire truth of conduct of Rev. Fr. M.G. Raj, fake trustee, Rev. Fr. Fernand Durai, the Principal, Rev. Fr. Robert Arokiasami, the

inquiry officer. The DVD□1 and DVD□2 is annexed as N□8 (Transcript page no.277□289) which will put light in the entire episode as it is electronic records and the submission of same DVDs at Education Tribunal were never controverted by the same petitioners during the whole trial as it contains the whole trust and only the truth.

If one has a reading of the Rojkam dated 1st Nov. 2013 of the HC-NIC Page 11 of 43 Created On Wed Sep 21 05:17:57 IST 2016 Inquiry annexed as N□9 (page no.312). That the Presenting Officer is absent to which the respondent no.1 has objected. The respondent has also objected to the forced cross examination of witnesses and also objected to the non supply of evidences at relevant stage of inquiry proceedings and further submits that the inquiry officer states in the same Rojkam that he will submit the inquiry report within 7 days but to the surprise of respondent, the inquiry report is dated 1st Nov. 2013 and to be noted that inquiry got over late in the afternoon on 1st Nov. 2013. hence the inquiry report was also premeditated by the inquiry officer who was biased and rude from the beginning.

It one has a look at the suspension order dated 06/06/2013 annexed at page no.49□50 of memo of the petition and the suspension order served upon respondent no.1 which is annexed as N□10 (page no.314). If one has look at the signature wherein Fr. M.G. Raj has signed as Managing Trustee, there is no stamp put in case of the copy served upon respondent which itself proves case of fraud, forgery and cheating done with respondent no.1. Hence there is cheating and fraud in the suspension order.

There were no complaint letters of the lady teachers ever supplied to the respondent no.1 thought it was asked for several times during the course of inquiry and hence such averments are after thought and premeditated averment to malign the reputation of respondent no.1.

Para 2(e) and (f): The contentions in this para, is denied. In reply to these para, it is submitted that the second show cause notice dated 21st Nov. 2013 signed by Fr. M.G. Raj as Trustee / Treasurer of the Ahmedabad Jesuit Schools Society is totally illegal and perverse and is not supported by any corner of law as Fr. M.G. Raj is / was unauthorised person of the trust and there could be no delegation of power through any resolution of the trust as Rule 11 of the trust itself forbids it as he was neither trustee or head of the institution of the trust.

Para 2 (g): The contention in this para, is denied. In reply to this para, it is submitted that the resolution authorising Fr. M.G. Raj and dismissal order, both dated 9th December 2013 is totally illegal as Fr. M.G.

Raj has done fraud and forgery with the Education Tribunal as well as respondent no.1 claiming to be trustees of the trust though he is/was not. The trust deed of the trust brings clarity to the whole controversy which is annexed herewith. The affidavit filed before the Deputy Charity Commissioner before the Court of Ld. Charity Commissioner puts more light on the matter which are annexed herewith. There are about dozens of document wherein Fr. M.G. Raj has represented as Managing Trustee of the Ahmedabad Jesuit School Society which runs St. Xavier's High School, Loyola Hall, hence it cannot be accepted by any stretch of imagination that signature and stamp put by Fr. M.G. Raj can be a manual error as Fr.

HC-NIC Page 12 of 43 Created On Wed Sep 21 05:17:57 IST 2016 M.G. Raj has degree in law and is aware of his actions and consequences of the same. The affidavit filed before the City Civil Court, Ahmedabad in civil Suit No.663 / 2014 annexed as N□1 (page no.329) wherein Fr. M.G. Raj has claimed himself to be Managing trustee in the affidavit of petitioner no.1 trust filed before the City Civil Court, Ahmedabad. It is pertinent to note that petitioner no.2, Fr. Fernand Durai has also put signature below the signature of Fr. M.G. Raj as Principal of High School. Hence it is clear that it is within the knowledge of petitioner no.2, Fr. Fernand Durai who is completely seized and possessed of every day aspect of the school as well as the affidavit filed by the petitioner no.1 trust. Your kind attention is drawn to annexure N□11 wherein, the said principal - petitioner no.2 herein has signed below the signature of Fr. M.G. Raj on the same page. Your kind attention is also invited to affidavit sworn on oath filed in the City Civil Court wherein Fr. M.G. Raj claims to be Managing Trustee of petitioner no.1 trust, Your honour the annexure at N□ 11 expose complete disregard of honouring rule of law of the land by Fr. Raj and petitioner no.2 herein. This clearly brings upon the table of the evil and malafide intent of the petitioner no.1 and 2 not only taking respondent no.1 to ride but also taking hon'ble court for a joy ride. Such extremely serious acts of illegality needs to be dealt with iron rod and in strictest manner to rebuild the respect for honourable courts and uphold the respect for judiciary in the eyes of general public. There is another affidavit filed Fr. M.G. Raj as Managing trustee before the Honorable Gujarat High Court in SCA 16396/2013 annexed as N□12. Looking to multiple acts of filing false affidavit shows Fr. M.G. Raj and petitioner no.2, Fr. Fernand Durai as habitual offenders with mens rea and requires mental rehabilitation or it will jeopardize the career of the pupils studying under them as petitioners have several criminal proceedings going against him in several courts.

Para 2 (h) : The contentions in this para, is denied. In reply to this para, it is submitted that it is constitutional right of the respondent no.1 to address

authorities with his grievances and file RTI application to procure details about the maladministration of the school and trust and the respondent no.1 reserves all right to produce various documents regarding the conduct of petitioners who have taken law in their hands and have come with unclear hands before the honourable court, as and when required.

Para 2(i) : No reply needed.

Para 2 (j) : The contentions in this para, is denied. In reply to this para, the respondent no.1 submits that the petitioner institution is exempted from various provisions of Gujarat Secondary Education Act, 1972 as well as Gujarat Secondary Education Regulations 1974 but not from section 36 1 (1) of Gujarat Secondary Education Act 1972 which may please be noted. The Miscellaneous Application No.1/2015 was filed HC-NIC Page 13 of 43 Created On Wed Sep 21 05:17:57 IST 2016 against Fr. M.G. Raj under various sections of Contempt of Court Act 1971 for abuse of judicial proceedings and the tribunal has stated in its judgment dated 9□12□2015 that it has no power to pursue the said contempt. The respondent no.1 submits that he will pursue it in appropriate forum for action against Fr. M.G. Raj and keeps his rights open.

Para 2(k) & (l) : The contentions in this para, is denied. In reply to this para, the respondent no.1 submits that there are many documents to prove the case of respondent no.1 on merits. The respondent no.1 reserves right to rely upon the same as and when required depending on the facts and circumstances of the case."

"5 Para 3 : The contentions in this para, are denied. It is submitted that there are many aspects about the violation of principles of nature justice done with respondent no.1. The tribunal has rightly gone into the aspect of the unauthorised person, who has conducted the whole inquiry, passed suspension order dated 06/06/2013 which also has discrepancy, dismissal order dated 09□12□2013 committing act of fraud, forgery, cheating with the respondent no.1. Such act of blatant violation of principles of natural justice cannot be supported by any Apex Court judgments and the judgments of the very honourable court. The provision of Gujarat Secondary Education Act, 1972 i.e. section 36 1(a) is applicable to the minority institution. The clause (a) is given below:

36 (1) No person who is approved as a headmaster, a teacher or a member of non□ teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until□

(a) he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, and The definition of "Manager" according to the Gujarat Secondary Education Act 1972:

Chapter - 1 Section 2 (j) "Manager" in relation to any school means a person or a body of persons in charge of the control or management of the school;

If one puts stress on clause (a), it mandatorily speaks about manager or if read in Gujarati it is "Sanchalak" who should have afforded the respondent no.1, a reasonable opportunity but it is not done so in the case of respondent. Hence from the first show cause notice to the dismissal HC-NIC Page 14 of 43 Created On Wed Sep 21 05:17:57 IST 2016 order, all were never ever given by the manager or the trustees. Hence such actions of petitioners prove that it was a criminal conspiracy hatched to remove the respondent no.1 to avenge their vendetta as the respondent no.1 had complained about Fr. M.G. Raj and petitioner No.2 to the President of the petitioner No.1 trust which is annexed at M-5 & M-6.

The resolution at Annexure "G" and "H" annexed with the memo of petition are afterthought of the petitioner trust as the respondent no.1 had complained to the Charity Commissioner about the misdeeds of the petitioner trust as per the order of this Honourable Court in SCA 2154/2015. Such resolution were never on record at the relevant point of time hence its authenticity is questionable! The answer to the wild allegation being made at respondent no.1 regarding the email, misbehaviour with staff and favoritism shown in the Board practical exam would be clear from the reply given to the petitioner trust pursuant to the second show cause notice (page 290--293) and page 450). The reply to second show cause notice is annexed at N-7. The act of subterfuge done by fake trustee Fr. M.G. Raj and the petitioner number no.2 is clear from the records on page 309. The principles of natural justice was violated from the beginning till date with respondent no.1. The order from the honourable court in SCA 10467/2015 annexed as N-13 directing upon petitioner to allow respondent no.1 to operate upon his locker to collect his belonging and AUDIO / VIDEO evidences to prove his case is itself a proof about the suffering and violation of principles of natural justice at the hands of petitioner. The theft from locker thereafter reported to the police authorities and submitted to Education Tribunal at Exhibit - 10 is annexed as N-14 which is self explanatory about the criminal intent of the petitioner in the present case.

The written submissions made by respondent no.1 with the Education Tribunal is annexed as N-15 (colly) which gives all minute reply

to the false contentions by the petitioner annexed herewith.

Hence, the basic thrust and the gist of the reply of the respondent no.1 is as follows:

a) The first show cause notice is given by fr. Fernand Durai who is the principal of the primary section according to the records of Hon'ble High Court. The first show cause notice is not given by the manager of the petitioner no.1 trust read with section 36 1(a) of Gujarat Education Act 1972.

b) The departmental inquiry against respondent no.1 was initiated by Fr. M.G. Raj as trustee of the petitioner no.1 trust. The documents annexed herewith at Annexure N□15, page no.363□406, proves beyond doubt about the credibility of Fr. M.G. Raj trustee /managing trustee.

c) The inquiry officer is the trustee of the school trust which collects the donation and fees of the students. The inquiry officer claims to be principal of the colleges but in fact is only lecturer of economics according to the records of salary slip released by commissioner of Higher Education Annexed at N□15 (colly) page no.409□410. The respondent no.1 had objected to the appointment of inquiry officer and had put several objection which were never considered. Hence the inquiry officer was biased and had committed fraud and forgery with respondent no.1.

d) The suspension order dated 06/06/2013 signed by Fr. M.G. Raj in the capacity of Managing Trustee served upon respondent no.1 is different from the suspension order annexed with memo of present petition.

e) The relevant documents were never provided during the course of inquiry proceedings. The respondents had put several objection. Fr. M.G. Raj had provided certain vital documents at belated stage of inquiry as Managing trustee which is clear cut violation of principles of natural justice and also fraud and forgery with respondent no.1 which is evident from the submission made with Education Tribunal at page no.363□406 about the discrepancy of the documents produced by the petitioners.

f) The respondent no.1 was not allowed to collect the evidences needed to prove his case during departmental inquiry from respondent no.1's locker in the staff room and was also not permitted to enter the school campus, when he had done to collect evidences from his locker so that Resp. no.1 could prepare his reply to the second show cause notice which was also signed by Fr. M.G. Raj as Trustee / Secretary / Treasurer of the school. But instead principles of natural justice was violated wherein respondent no.1 was not afforded reasonable opportunity by petitioners to

prove his innocence at relevant point of time. Even videography was not permitted by petitioners hence Resp. no.1 had to record the whole inquiry proceedings apprehensive of malafide intent of the petitioners which is on record at Annexure N□ 8.

g) The order of dismissal of respondent no.1 dated 09□12□2013 was passed by Fr. M.G. Raj as trustee which is illegal.

h) From documentary evidence it is evident that Fr. M.G. Raj has claimed to be Managing trustee which was totally illegal in pursuance to the Apex Court judgment and the judgment of this honourable court in submission before Education Tribunal annexed at page no.408, 523□525. Hence the petitioner no.1 and 2 has crossed all limits in violating principles of natural justice and has brought dis□reputation to the respondent no.1 by their criminal act and has also mislead the hon'bel Court.

i) There is no adverse remark informed to the respondent no.1 by HC-NIC Page 16 of 43 Created On Wed Sep 21 05:17:57 IST 2016 petitioner no.2 in the Confidential report, the fact of which is submitted before the Education Tribunal at page no.451 which is not controverted by the petitioners then."

7 On 22nd January 2016, the following order was passed:

> "The petitioners herein are Trustee and Principal of St. Xavier's High School, run and managed by Ahmedabad Jesuits Schools Society, Ahmedabad. They have challenged the Order dated 9th December 2015 passed by the Gujarat Educational Institutes Services Tribunal, Ahmedabad in New Appeal No. 339 of 2014 [Old Application No. 5 of 2014] whereby the Tribunal has partly allowed the appeal and cancelled the order of dismissal dated 9th December 2013 passed against the respondent no.1□ employee.
>
> The respondent no.1 herein was appointed as a Shikshan Sahayak vide Order dated 13th February 2006 to serve in the Higher Secondary Section of the petitioner no.2□School. He was served with a show cause notice on 1st April 2013 levelling serious charges like sending objectionable anonymous emails against the petitioner no.2□Principal of the School; misbehaving with lady supervisor; indulging in malpractices, while conducting the Board Practical examination; instigating students to go on strike and to demonstrate Dharna; forcing students to misbehave and to harass other staff members and threatening co□employees as well as students.
>
> It is the say of the petitioners that after giving fullest opportunities to the respondent no.1□employee, the departmental inquiry was concluded and a

second show cause notice dated 21st November 2013 was issued seeking explanation as to why he should not be dismissed from services of the Institution. It is further the say of the petitioners that vide Resolution dated 9th December 2013, it was resolved to authorize Father MG Raj to pass an order of dismissal against the respondent no.1, and accordingly, the respondent no. 1 employee was dismissed from services vide Order dated 9th December 2013.

The Tribunal, on due examination of the material and after affording opportunities to both the sides, decided in favour of the respondent no.1 herein and against the petitioner Institution.

Learned senior advocate Shri SI Nanavati appearing with Ms. Anuja Nanavati for the petitioners has urged that the very base of the Tribunal's order is erroneous. It has disregarded the fact that the Trustees were authorized to delegate power by way of an authorization to Father MJ Raj HC-NIC Page 17 of 43 Created On Wed Sep 21 05:17:57 IST 2016 who acted for and on behalf of the Trustees and issued show cause notice and eventually an order of dismissal. It is further urged that this was so done by virtue of rules and regulations; particularly Rule 11 of the Rules & Regulations of the petitioner no.1 Society which authorizes the Managing Board to delegate any or all those powers to the Heads of the Institutions which are under the control and management of the Society. It is further his say that reference to Regulation 27 of the Gujarat Secondary Education Regulations, 1974 is erroneous simply because this would have no applicability at all. Moreover, Section 40A of the Gujarat Secondary Education Act, 1972 provides clearly that, nothing contained in clause (26) of Section 17, Sections 34 and 35, and clause (b) of sub section (1) and sub sections (2), (3), (4) & (5) of Section 36 shall apply to any educational institution established and administered by a minority, whether based on religion of language and the same has been held ultra vires by the Division Bench of this Court in its Order dated 25 th June 2010 rendered in S.C.A No. 23753/2006 and allied cases.

Learned advocate Mr. Vishwas Shah appearing for the Caveator respondent no.1 has urged that the employee has been dismissed from service on 9th December 2013. He had received some subsistence allowance while he was under suspension. Though the Tribunal passed an order of quashing and setting aside the order of dismissal, he has not been paid a single penny towards subsistence. He added that even if the Court requires to consider the matter, the respondent no.1 employee is ready to work, and therefore, interim relief may not be granted without making some provision for the respondent employee. He has further urged that the respondent no.1 is ready to work and he had approached the Institution after passing of the order by the Tribunal. According to him, the Tribunal

has also given opportunity to the petitioner Institution and therefore also, no likely prejudice is to arise to the petitioner and after following the due procedure, it can take a fresh decision.

Having thus heard both the sides and also having considered the reasoning given by the Tribunal, while quashing the order of dismissal dated 9th December 2013, it could be noticed that essentially the base is Regulation

27. The Tribunal is actuated by the fact that the authority which has passed the order of dismissal has no authority to so do it, disregarding Rule 11 of the Rules & Regulations of the petitioner□Trust. Moreover, as it is shown to this Court, barring Section 36[1](a) of the Gujarat Secondary Education Act, 1972. The remaining sub□sections namely 36 [1](b), 36 [2], 36 [3], 36 [3], 36 [4] & 35 [5] would have no applicability in case of minority Institutions, whether based on religion or language. The entire basis of quashment of the order being prima facie erroneous, the matter would require consideration.

Hence, RULE returnable on 29th February 2016. Formal service of notice of rule is waived by learned advocate Mr. Vishwas Patel appearing for the HC-NIC Page 18 of 43 Created On Wed Sep 21 05:17:57 IST 2016 respondent no.1 and by learned Assistant Government Pleader Mr. Shruti Pathak for respondent no.4. There shall be interim relief in terms of para 7[B] till then."

8 Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the Tribunal committed any error in passing the impugned order.

9 Before adverting to the rival contentions canvassed on either sides, let me look into few provisions of the Gujarat Secondary Education Act 1972. Chapter VI is with regard to the provisions relating to the services in the registered Private Secondary Schools. Section 36(1)

(a) and (b) reads as under:

> "36. (1) No person who is appointed as a head□master, a teacher or a member of non□teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until □
>
> (a) he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, and
>
> (b) the action proposed to be taken in regard to him has been approved in writing by an officer authorised in this behalf by the Board:"

10 Section 40A of the Act reads as under:

> "40A Savings - Nothing contained in clause (26) of Section 17, sections 34 and 35, and clause (b) of sub-section (1) and sub-sections (2), (3), (4) and (5) of section 36 shall apply to any educational institutions established and administered by a minority, whether based on religion or language."

11 Section 40A makes it abundantly clear that Section 36(1)(b), (2), (3), (4) and (5) would not apply to an educational institute established HC-NIC Page 19 of 43 Created On Wed Sep 21 05:17:57 IST 2016 and administered by minority, whether based on religion or language. Indisputably, the petitioner No.1 is a minority institution. I am not at all impressed by the findings recorded by the Tribunal that since the charge memo contained the proposed punishment of dismissal, the same rendered the entire inquiry non-est. I am also not impressed by the findings of the Tribunal that Father M.G. Raj could not have passed the order of dismissal, as it is only the Board being the appointing authority, who could have initiated the inquiry and passed the final order.

12 It is well-settled that any authority be it administrative, judicial or quasi-judicial, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause notice proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

13 The Supreme Court in the case of Oryx Fisheries (P) Limited vs. Union of India [(2013) 13 SCC 427] has explained in details the concept of "reasonable opportunity" and the effect of the expression like "alleged acts", "prima-facie guilty", "dismissal" etc, in the departmental chargesheet. The Supreme Court, in paras 24 to 28, 31 to 35, 38 to 42, pronounced as under:

> "24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.
>
> 25. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khme Chand v. Union of India and others, reported in AIR 1958 HC-NIC Page 20 of 43 Created On Wed Sep 21 05:17:57 IST 2016 SC 300, of course in the context of service jurisprudence, reiterated certain

principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand (supra) held that the concept of `reasonable opportunity' includes various safeguards and one of them, in the words of the learned Chief Justice, is: "(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;"

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge□ sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi□judicial proceeding also. If the functioning of a quasi□ judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against."

"31. It is of course true that the show cause notice cannot be read hyper□ technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show□cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show□cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi□ judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show□cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

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33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

34. A somewhat similar observation was made by this Court in the case of Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and others, (2001) 1 SCC 182. In that case, this court was dealing with a show cause notice cum charge□sheet issued to an employee. While dealing with the same, this Court in para 25 (page 198 of the report) by referring to the language in the show cause notice observed as follows:

"25. Upon consideration of the language in the show□cause notice□cum□charge□ sheet, it has been very strongly contended that it is clear that the Officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete."

After para 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in paragraph 35 (page 201 of the report), the true test of bias is:

"35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom □□in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained:"

(emphasis supplied)

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show cause notice itself."

"38. On the question whether the entire proceeding for cancellation of registration initiated by the show cause notice and culminating in the order of cancellation is vitiated by bias we can appropriately refer to the succinct formulation of the principle by Lord Reid in Ridge v. Baldwin and others (1964 A.C. 40) : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL). The Learned Law Lord, while dealing with several concepts, which are not susceptible of exact definition, held that by fair procedure one would mean HC-NIC

Page 22 of 43 Created On Wed Sep 21 05:17:57 IST 2016 that what a reasonable man would regard as fair in the particular circumstances (see page AC 65 of the Report). If we follow the aforesaid test, we are bound to hold that the procedure of cancellation registration in this case was not a fair one.

39. On the requirement of disclosing reasons by a quasi-judicial authority in support of its order, this Court has recently delivered a judgment in the case of Kranti Associates Pvt Ltd. & another v. Sh. Masood Ahmed Khan & others on 8th September 2010.

40. In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below:

"(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on HC-NIC Page 23 of 43 Created On Wed Sep 21 05:17:57 IST 2016 relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common

purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405 :

2001 ICR 847 (CA), wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

42. In Institute of Chartered Accountants of India v. L.K. Ratna and others, (1986) 4 SCC 537, it has been held:

> "18.....after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding." (emphasis in original) 14 The decision of the Supreme Court in Oryx Fisheries (supra) is clearly distinguishable on facts. The show cause notice, which did not find favour with the Supreme Court, had been quoted at para 22 of the decision. Referring thereto, the Supreme Court in paragraph 24 of the decision had held that the notice had been issued with a closed mind. The language used in the show cause notice, in the perception of the Supreme Court, ought not to have been used; in the present case, the accusations cannot give rise to a genuine apprehension in the mind of the respondent No.1 that the conclusion had been drawn and an opportunity was being given only to dispel the same.

> 15 It is settled law that the real purpose of initiating a disciplinary proceeding is to inquire as to whether the facts relating to delinquency, prima facie ascertained against a charged officer/staff, are correct or not. The purpose cannot be to cause a secret inquiry against him and to form a positive and firm view about his complicity in the alleged misconduct and thereafter to give him an opportunity to dispel the conclusion HC-NIC Page 25 of 43 Created On Wed Sep 21 05:17:57 IST 2016 already drawn against him. Charges framed must be clear and must not suffer from any ambiguity or vagueness. If the charge is not expressed in clear and certain terms, then the officer/staff is likely to be misled and suffer prejudice for the vagueness in the charge-sheet, not knowing the case he has to meet. A charge-sheet has to be read in a common sense way to see that there is a plain statement of an act complained as wrong, so that the officer/staff complained against may raise effective defence. A technically and legalistically strict view would have to be eschewed. Whether or not a disciplinary authority has a closed and pre-judged mind at the inception of disciplinary proceeding cannot really be comprehended only by having a look at the expressions used in the charge- sheet. Expressions used, at times, may be deceptive. A

disciplinary proceeding may be ruled to have been initiated with closed and pre-judged mind if from the 17 attending circumstances such a conclusion can reasonably be drawn, even though there is a proliferation of non-injurious expression in the charge-sheet like "alleged acts", "prima facie guilty", "tentative view", etc. and the charge-sheet appears to be perfectly worded; whereas, a proceeding initiated absolutely bona fide, may not be interdicted despite definite expressions in the charge-sheet which might give an impression in the mind of the charged officer/staff that nothing remains to be decided and that the same has been initiated only to complete a formality in law, unless of course surrounding circumstances are such that the Court is convinced that there has been deflection of justice. A charge-sheet has to be construed in a reasonable manner and too much legalism cannot be expected of a domestic enquiry. If apart from the inappropriately worded charge-sheet there is no other incriminating circumstance having the effect of vitiating the proceedings culminating in an order of penalty, it would be prudent exercise of judicial discretion not to interfere. [See : Indrani Dutta (Chowdhury) v. Vidyasagar University 2015 2 CalLT 167] HC-NIC Page 26 of 43 Created On Wed Sep 21 05:17:57 IST 2016 16 The findings recorded by the Tribunal that the word "dismissal" in the chargesheet amounts to prejudged dismissal has not impressed me worth the name. I am of the view that merely because the word "dismissal" was mentioned in the chargesheet, it cannot be said that it influenced the mind of the authority. The order of dismissal has been passed independently on the basis of the findings of the inquiry officer. Had there been no materials on record for establishing the guilt, the submission of the respondent No.1 appearing in person as also the findings recording by the Tribunal had been influenced by the use of the word "dismissal" in the chargesheet and the decision to dismiss the respondent No.1 from service was prejudged and predetermined.

17 In the aforesaid context, I may refer to and rely upon a Division Bench decision of the Karnataka High Court in the case of S. Nagiah vs. Indian Aluminium Company Limited [1991 (1) LLJ 554]. The observations made by the Bench, as contained in paras 13 to 21, are relevant. The same are elicited as under:

"13. We will now consider these two point in seriatum :

1) Whether the charge memo has not been issued by the Competent Officer ? If so, whether it affects the further proceedings by way of disciplinary enquiry and the ultimate order;

2) Whether there has been a pre-judging in this case.

14. Certified Standing Order 2(ii) defines the Management as follows :□ "2(ii). "Management" means the Company's management and includes the General Manager and delegate or delegates."

Section 23(d) of the Certified Standing Orders states as follows :□ "23(d). A workman against whom an enquiry has to be held shall be given a charge sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be given an opportunity to answer the charge and be permitted to be HC-NIC Page 27 of 43 Created On Wed Sep 21 05:17:57 IST 2016 defended by another workman. The workman shall be permitted to produce witnesses in his defence and to cross examine any witness on whose evidence the charge rests. A concise summary of the evidence led on either side and workman's plea shall be recorded. The Enquiry Officer shall submit the report along with findings to the General Works Manager, who shall pass the final orders and communicate to the workman concerned in writing."

Therefore for a casual reading it may appear that it is only the authority who had been mentioned under Certified Standing Order 23(d), Namely, the General Works Manager who will have to pass final orders. In the case reliance is placed on Exhibit A□7 in view of the defiance of the 'management' extracted above. That is an inclusive definition which includes the delegate or delegates. No doubt that Circular relating to delegation came to be produced after the decision in the case of another workman and therefore much is made of it saying it has been fabricated for the purposes of this case. But one thing is clear, Ex. A□7 is 'ante litum motum'. Therefore, it is not correct to say that no reliance can be placed on this Exhibit A□7 as has been held by the Industrial Tribunal. However, we do not propose to rest out conclusion with reference to the validity of charge memos dated 14th April 1980 and 29th April 1980 which came to be issued by the General Production Superintendent by delegated authority. We would rather address ourselves to the question whether the issue of such memorandum of charges on which the disciplinary enquiry was initiated, if assuming to be bad, would vitiate the enquiry. It cannot be gainsaid that the charge memo is a charter for any disciplinary enquiry. However, even in a case where the rights of the civil servants are protected under Article 311 of the Constitution, we do not think bad memo of charge would vitiate the whole enquiry because the said Article, which throws a protective umbrella and acts as bulwark against the pressure of the executive states that no person who is a member of Civil Service of the Union or of an All India Service or Civil Service of State or hold civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The only requirement therefore is about the ultimate order of dismissal or removal.

But there is no bar in initiating the enquiry. This is exactly the view that was taken in the case reported in State of M.P. & Ors. v. Shardul Singh (supra). We will extract paragraphs 1 and 10 of the said Judgment which are as follows : "1) Scope of Article 311(1) of the Constitution comes up for consideration in this appeal by certificate. The High Court of Madhya Pradesh, has opined that the power of dismissal and removal referred to in Article 311(1) implies that the authorities mentioned in that Article must alone initiate and conduct the disciplinary proceeding culminating in the dismissal or removal of a delinquent officer.

10) But for the incorporation of Article 311 in the Constitution HC-NIC Page 28 of 43 Created On Wed Sep 21 05:17:57 IST 2016 even in respect of matters provided therein, Rule could have been framed under Article 309. The provisions in Article 311 confer additional rights on the civil servants. Hence we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article."

15. Following this ruling, in the case of Workmen of Indian Overseas Bank v. Indian Overseas Bank & Anr. (supra) in paras 12 and 13 it was stated as under (PP. 321 322) :

> "12) The next contention raised by Mr. Chari was that the dismissal of the four workmen by the management is illegal as the proceedings against them were initiated by a person not competent to do so. It is a common case that charge sheets dated 1st September, 1965, sent to workmen, were issued under the signatures of Shri Rao, the Assistant General Manager. It is also a common case that, later on, the enquiry was held by Shri Ramachandran who himself held the enquiry, heard the concerned workmen and ultimately passed the dismissal order. Mr. Chari's contention is that disciplinary proceedings start from the initiation of the enquiry and encompasses within its ambit the proceedings from the stage of issue of charge sheet to the final order. According to the learned Counsel the initiation of the enquiry is a very material fact and this could only be done by the Officer who had been designated to take disciplinary action, i.e., Shri Ramachandran. The contention of the learned Counsel, therefore, boils down to this that as the charge sheets were issued and the decision to hold an enquiry was taken by Shri Rao who was not the Officer designated under para 521(12) of the Sastry Award, the whole enquiry proceedings ultimately resulting in dismissal are void and are of no legal effect. It was contended that it was essential that the disciplinary authority itself must apply its mind in the first instance to the explanations submitted by the concerned workmen and it is only after it comes to the conclusion that it is not so satisfied

> and wants to hold an enquiry that the enquiry should be held. It was suggested that it is not possible to say whether Shri Ramachandran who was the disciplinary authority would have decided to hold the enquiry, had he considered the explanations of the concerned workmen at the initial stage. Thus, it is submitted that the charge□sheets issued by Shri Rao having been issued by a person not competent to do so, the whole proceedings resulting in the dismissal of the concerned workmen are void. This plea partly found favour with the Tribunal who was inclined to hold that the charge sheets were not issued by the Officer HC-NIC Page 29 of 43 Created On Wed Sep 21 05:17:57 IST 2016 empowered by the bank to take disciplinary action as according to him the disciplinary proceedings start with the issue of a charge sheet. For this proposition the Tribunal relied on Shardul Sing v.

State of Mahdya Pradesh (1968□II□LLJ□274). But the Tribunal considered this as a mere irregularity and found that no prejudice has been caused to the workmen by the initiation of the enquiry proceedings as the dismissal had been ordered by the disciplinary authority and, therefore, negatived this contention of the workmen. Mr. Chari before me also relied mainly on this authority. Mr. Pai, the learned Counsel for the respondent, however, pointed out that the whole fabric of the argument by the petitioners is without substance as it bases itself mainly on the decisions given above. Mr. Pai pointed out that this decision has been overruled by the Supreme Court in the case of State of Madhya Pradesh v. Shardul Singh (C.A. No. 2554 of 1966, decided on 2nd December, 1969). This case has also been reported as (1970) 2 S.C.C. 108. This was a case which had come up in appeal from the Madhya Pradesh High Court decision mentioned above. Their Lordship of the Supreme Court set aside the Judgment of the High Court. The High Court had held that the enquiry by the Superintendent of Police was against the mandate of Article 311 (1) of the Constitution of India as he was not competent to initiate or conduct the enquiry because the dismissal order could only be passed by the Inspector General of Police. The Supreme Court did not accept the correctness of this view and their Lordships observed as under :

> "Hence we are unable to agree with the High Court that the guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article."

13) Mr. Chari sought to distinguish this authority by pointing out that there the power under the Rules was given to initiate action to the Superintendent of Police. But, in my view, this distinction is without any substance. Their

Lordship have clearly expressed the view that it is not necessary for the authority which is to pass the order of dismissal, to initiate enquiry itself. I am further inclined to agree with the view of the Tribunal that even if the charge sheets were issued by Shri Rao, the same is not such an infirmity as to render the whole proceedings against the concerned workmen illegal and void. It is not disputed that the enquiry proceedings were held by Sri. Ramachandran, the disciplinary authority himself. It is also not disputed that personal hearing was given by him and the order of dismissal was passed by him. It, therefore, cannot be said that the mere fact of the charge□sheets originally having been issued by Shri Rao (assuming that he was not competent to do so) would make the further proceedings void. In this connection it is also necessary to notice that in the replies sent HC-NIC Page 30 of 43 Created On Wed Sep 21 05:17:57 IST 2016 to the charge sheets issued by Shri Rao or even in reply to the show cause notice, no grievance was made that the whole proceedings were bed because of the reason that the charge sheets were not issued to the concerned workmen by the person authorised to do so. If the grievance was made that the charge sheets were not issued by the proper person, the management might have withdrawn them and fresh charge sheets could have been issued by the disciplinary authority. The workmen not having objected to the issue of the charge sheets by Sri Rao, could not now be permitted to urge that as a ground for challenging the ultimate order of dismissal passed by the disciplinary authority against them. This contention of Mr. Chari, therefore, fails."

16. Mr. Rao contended that it is to be noted that the Supreme Court upheld the validity of the charge memo because under the relevant regulation the Superintendent was authorised to issue the charge memo. As a matter of fact this very contention was repelled as seen from paragraph□13 extracted above.

17. To the same effect is the decision in the case reported in Bata India Ltd v. M. C. Bharadwaj & Another (supra), wherein it was held that even where the charge memo is defective, if there had been a substantial compliance with regard to a disciplinary enquiry, the ultimate order would not suffer.

18. Now coming to the case of Steel Authority of India v. The Presiding Officer, Labour Court (supra) the facts require to be noted in para□2 are as follows (P. 457) :□ "During the pendency of the application under Section 33(2)(b) of the Industrial Disputes Act the respondent made an application under Section 33A of the Act praying for setting aside his dismissal and for reinstating him with consequential reliefs. The two applications were taken up for hearing together by the Labour Court and on the respondent's prayer, the issue as to the authority of the Chief Medical Officer to frame charges and to constitute the inquiry committee was heard as a preliminary issue. On 16th November, 1976 the Labour Court held that the Chief Medical Officer was incompetent under the Rules to frame charges against the respondent

and constitute the inquiry committee and accordingly held that the domestic inquiry was defective and invalid. The Labour Court was, however, of opinion that the company's case could not be dismissed at this stage and that the company should be given an opportunity to adduce evidence in support of the action it had taken against the respondent." From the above, it is clear that two writ petitions came to be filed and HC-NIC Page 31 of 43 Created On Wed Sep 21 05:17:57 IST 2016 both of them were dismissed by the Patna High Court. The workmen did not challenge it while the management did not challenge it before the Court and it was held that the charge memo, having regard to the rules, was issued by a person not authorised under the rules and, therefore, it would be bad. Even then, as seen from the concluding paragraph, it is clear that that part of the order of the High Court directing evidence be permitted was not interfered with. Therefore, this case does not in any way enable the workmen appellant to contend that the charge memo itself must be issued by a person who is ultimately competent to punish.

19. Certainly as rightly contended by Mr. Sundaraswamy, the Management cannot be penalised for having issued a charge memorandum which the enquiry is stated to be defective and for which explanation was furnished by the workman; on which the enquiry took place and which resulted in the order of dismissal. Such a case cannot be worse than a case of non□ issue of charge sheet or non□conduct of enquiry at all. This is where the case of Kamal Kishore Lakshman v. Management of M/s. Pan american World Airways Inc. & Ors. (supra) Para□ 10 becomes relevant. That paragraph is extracted below (P. 110) :□ "10) Retrenchment as defined in Section 2(00) of the Industrial Disputes Act and as held by this Court in several cases means termination of service for any reason whatsoever other wise than as punishment inflicted by way of disciplinary action and the other exceptions indicated action and the other exceptions indicated therein. In the present case though no formal domestic inquiry had been held, the employer took the stand in the adjudication that termination was grounded upon loss of confidence and substantiated that allegation by leading evidence. The legal position firmly established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken, it is open to the employer to ask for, such opportunity in the course of adjudication. In the facts of the present case, the order of separation grounded upon loss of confidence has been justified before the Labour Court and the Labour Court has come to that conclusion upon assessment of the evidence."

20. To our mind it appears that the matter has to be looked at in a proper perspective. Has the workman suffered any prejudice ? Was he in a position to understand the nature and the scope of the charges ? Was he in a position to meet the charges and therefore was he in a position to furnish a proper explanation ? If these are answered in the affirmative, we do not know how it could be contended as is urged by the learned Counsel Mr. Rao for the

workman that the initiation of the disciplinary proceedings is bad. We should also state at this juncture that the disciplinary enquiry is only for the purpose of establishing the guilt of a HC-NIC Page 32 of 43 Created On Wed Sep 21 05:17:57 IST 2016 particular workman or the delinquent officer as the case may be. Beyond that there is no logic in stating that the charge memo must be issued by the competent Officer. There is no question of any competent Officer issuing a charge memo. In this case even the Certified Standing Order 23(d) merely talks of the ultimate order being passed by the General Works Manager. It cannot be contended that the initiation of the disciplinary enquiry leads on ultimately to the order of dismissal and where therefore the foundation has not been properly laid the edifice cannot remain. This argument does not appeal to us for the simple reason that initiation is one thing and the ultimate dismissal is another, though they are part of the came proceedings. It may also be recalled that before Article 311 of the Constitution came to be amended by the 42nd Amendment it was thought domestic enquiry would consist of two parts, namely, issue of charge memorandum and the findings constituting one stage and the issue of second show cause notice and the ultimate order constituting the second stage. Therefore, we are firmly of the opinion that there is absolutely nothing wrong in the General Production Superintendent issuing the charge memos dated 14th April, 1980 and 29th April, 1980. The workman understood the charge, offered his explanation on 16th April, 1980 and 5th May, 1980. He was visited with inquiry notice dated 19th April, 1980 and 6th May 1980. He participated in enquiry and as on that the Report was submitted on 17th June, 1980 and 26th August, 1980. He was issued a second show cause notice on 8th July, 1980 and he replied on 11th July, 1980 and it is thereafter on 14th July 1980 the proposed dismissal was passed and he was informed on 14th July, 1980 that the application under Section 33(1) would be filed before the Tribunal having regard to the pendency of the industrial dispute.

21. Therefore, we hold on point No. 1 that the charge memo issued by the General Production Superintendent (S. S. Saihgal) is valid and does not vitiate the further proceedings resulting in the ultimate order of dismissal."

18 The view taken by the Division Bench of the Karnataka High Court is quite commendable and I am in complete agreement with the same. It is difficult for me to take the view that the respondent No.1 herein suffered a serious prejudice on account of the so□called defective charge memo. The respondent No.1 understood the nature and the scope of the charges very well and was not in a position to meet the charges. The view taken by the Tribunal that the charge memo must be issued by the HC-NIC Page 33 of 43 Created On Wed Sep 21 05:17:57 IST 2016 competent officer is without any logic.

19 In the case of Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha [2012(11) SSC 565], the Supreme Court, while holding that ordinarily a writ application would not lie against a chargesheet or show cause notice, made certain observations which are relevant for our purpose. The same are elicited as under:

> "4. The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India, 1950 that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.
>
> 5. It is permissible for an authority, higher than appointing authority to initiate the proceedings and impose punishment, in case he is not the appellate authority so that the delinquent may not loose the right of appeal. In other case, delinquent has to prove as what prejudice has been caused to him. (Vide: Sampuran Singh v. State of Punjab, AIR 1982 SC 1407; Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank and Ors., AIR 1995 SC 1053; Balbir Chand v. FCI Ltd. and Ors., AIR 1997 SC 2229; and A. Sudhakar v. Postmaster□General Hyderabad and Anr., (2006) 4 SCC 348).
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> 6. In Inspector General of Police and Anr. v. Thavasiappan, AIR 1996 SC 1318, this Court reconsidered its earlier judgments on the issue and came to the conclusion that there is nothing in law which inhibits the authority subordinate to the appointing authority to initiate disciplinary proceedings or issue charge memo and it is certainly not necessary that charges should be framed by the authority competent to award the punishment or that the inquiry should be conducted by such an authority. In Steel Authority of India and Anr. v. Dr. R.K. Diwakar and Ors., AIR 1998 SC 2210; and State of U.P. and Anr. v. Chandrapal Singh and Anr., AIR 2003 SC 4119, a similar view has been reiterated.
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> 7. In Transport Commissioner, Madras □5 v. A. Radha Krishna Moorthy, (1995) 1 SCC 332 : (1995 AIR SCW 1555), this Court held:
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> "8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to HC-NIC Page 34 of 43 Created On Wed Sep 21 05:17:57 IST 2016 the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for

quashing the charges by the Tribunal." (See also: Director General, ESI and Anr. v. T. Abdul Razak etc., AIR 1996 SC 2292; and Chairman-cum-Managing Director, Coal India Limited and Ors. v. Ananta Saha and Ors., (2011) 5 SCC 142) : (2011 AIR SCW 3240)

8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide: The State of Madhya Pradesh v. Bani Singh and Anr., AIR 1990 SC 1308; State of Punjab and Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; Deputy Registrar, Co-operative Societies, Faizabad v. Sachindra Nath Pandey and Ors., (1995) 3 SCC 134 : (1995 AIR SCW 3028); Union of India and Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition and Excise Department v. L. Srinivasan, (1996) 3 SCC 157; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; Food Corporation of India and Anr. v. V.P. Bhatia, (1998) 9 SCC 131; Additional Supdt. of Police v. T. Natarajan, 1999 SCC (LandS) 646; M.V. Bijlani v. Union of India and Ors., AIR 2006 SC 3475; P.D. Agrawal v. State Bank of India and Ors., AIR 2006 SC 2064; and Government of A.P. and Ors. v. V. Appala Swamy, (2007) 14 SCC 49) : (AIR 2007 SC (Supp) 587).

9. In Forest Department and Ors. v. Abdur Rasul Chowdhury, (2009) 7 SCC 305 : (AIR 2009 SC 2925), this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not be permitted to continue.

10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is HC-NIC Page 35 of 43

Created On Wed Sep 21 05:17:57 IST 2016 infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh and Ors., (1996) 1 SCC 327 :

(AIR 1996 SC 691); Ulagappa and Ors. v. Div. Commr., Mysore and Ors., AIR 2000 SC 3603 (2); Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr., AIR 2004 SC 1467; and Union of India and Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

11. In State of Orissa and Anr. v. Sangram Keshari Misra and Anr., (2010) 13 SCC 311 : (2010 AIR SCW 6948), this Court held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority.

(See also: Union of India and Ors. v. Upendra Singh, (1994) 3 SCC 357) :

(1994 AIR SCW 2777)

12. Thus, the law on the issue can be summarised to the effect that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

13. The instant case requires to be examined in the light of the aforesaid settled legal propositions.

14. The respondent delinquent challenged the charge-sheet on the ground that it had been issued by the authority not competent to do so. The Tribunal vide impugned order dated 4.1.1996 quashed the same only on the ground that the Deputy Director General of Ordnance Factory was the appointing authority of the delinquent employee and competent to impose the penalty referred to under the statutory rules. The charge-sheet

had been issued by the authority subordinate to him. Thus, the same was not issued by the competent authority.

15. The said judgment and order of the Tribunal shows that the present appellants were not represented nor any argument had been advanced on their behalf as neither name of the counsel for the appellants has been HC-NIC Page 36 of 43 Created On Wed Sep 21 05:17:57 IST 2016 mentioned rather the space is left blank, nor any reference to his argument had been made. The appellants filed a review petition according to which the order had been passed by the Tribunal without giving an opportunity to the appellants to file a detailed counter-affidavit and a plea had been taken that the authority which issued the charge-sheet had been authorised by the disciplinary authority to serve the charge memo and conduct/conclude the enquiry in the name and under the order of the competent authority. However, the said authority was authorised to impose the punishment. The review has been rejected by a cryptic order.

16. The High Court concurred with the findings recorded by the Tribunal.

17. Even before us, no order of authorisation in general or any rule permitting the competent authority to delegate its power for conducting the enquiry has been produced. Thus, in such a fact-situation, it is neither desirable nor possible to deal with the issue, rather it is desirable that the issue be left open."

20 The aforenoted decision of the Supreme Court demolishes the view of the Tribunal that Father M.G. Raj, not being the appointing authority, could not have initiated the proceedings and passed the final order of dismissal from service.

21 At this stage, let me look into the resolutions of authorisation.

> "RESOLUTION A meeting of the Governing Body of the Ahmedabad Jesuit School's Society was called urgently on 18th November 2013 at Newman Hall with the President in the Chair, at which a quorum was present to discuss about the inquiry report dated 01.1.2013 submitted by inqury officer who has conducted an inquiry against the charges levelled against Biju Jose Vadaken, an Asst. Teacher of St. Xavier's High School, Loyola, Higher Secondary Section, Science Stream.
>
> On bare perusal of the inquiry report, submitted by the inquiry officer, it is revealed that the management has examined as many as 11 witnesses and from the report of the inquiry officer, it is further reveled that though the ample opportunity was given to the delinquent employee to cross examine the said witnesses and to give his defence statement, the delinquent employee has refused to do so, however, the inquiry officer has on the basis of this deposition and the documentary evidence, held that he

delinquent employee is guilty of the charges levelled against him.

HC-NIC Page 37 of 43 Created On Wed Sep 21 05:17:57 IST 2016 Considering the resolved that the inquiry report submitted by inquiry officer dated 01.11.2013 is accepted in Toto.

Considering the seriousness of the charge, it is further resolved that the show□ cause notice with the proposed punishment of dismissal may be issued to Biju Jose Vadaken and Fr. M.G. Raj SJ is authorized to issue such show cause notice.

Certified that the above is the true copy of the Resolution.

Date: 18.11.2013 Place : Ahmedabad.

TRUSTEE / TREASURER THE AHMEDABAD JESUIT SCHOOLS SOCIETY"

"RESOLUTION A meeting of the governing body of the Ahmedabad Jesuit Schools Society was called urgently today at 9 a.m. at Newman Hall with the president on chair, at which a quorum was present to discuss about the final action to be taken against Mr. Biju Jose Vadaken an Asst. Teacher of St. Xavier High School, Loyola, Higher Secondary Section,l Science Stream.

Fr. M.G. Raj S. J. informed the governing body that pursuant to the resolution dt. 18th November 2013 a show cause notice for the proposed punishment of dismissal along with the inquiry report submitted by the inquiry officer dt. 1st November 2013 were served upon Biju Jose Vadaken on 21st November 2013 by Reg. Post and the acknowledgment receipt delivered by the postal department indicate that the said show cause notice was received by him on 22nd November 2013.

Mr. Biju Jose Vadaken was called upon to show cause within 15 days as to why he should not be dismissed as an Asst. Teacher of St. Xavier High School (Higher Secondary Section). Mr. Biju Jose Vadaken has not tendered any explanation to the above mentioned show cause notice within the stipulated time.

Considering the fact that in a departmental inquiry held against him where he was held guilty for all the charges levelled against him and no explanation has been tendered to the show cause dt. 21 st November 2013 and also considering the seriousness of the charges it is resolved that Mr. Biju Jose Vadaken is to be dismissed from service as an Asst. Teacher of St. Xavier High School (Higher Secondary Section).

Fr. M.G. Raj S.J. is authorised to pass order of dismissal against the said teacher Mr. Biju Jose Vadaken.

HC-NIC Page 38 of 43 Created On Wed Sep 21 05:17:57 IST 2016 Date: 09/12/2013 Place : Ahmedabad TRUSTEE / TREASURER THE AHMEDABAD JESUIT SCHOOLS SOCIETY"

" 5th March 2015 RESOLUTION A meeting of the Governing Body of the Ahmedabad Jesuit Schools' Society was called urgently on 5th March 2015 at 11.00 a.m. at Premal Jyoti with the President in chair and at which a Quorum was present to discuss about the authority of Fr. M.G. Raj, S.J. to sign, execute and make any necessary representation, affidavit in form of application, reply etc, as may be required in any legal proceedings or any matter pertaining to the dismissal of the Assistant Teacher Mr. Biju Jose Vadaken.

It is resolved that Fr. M.G. Raj was earlier authorised to conduct necessary departmental proceedings against and in respect of the Assistant Teacher Biju Jose Vadaken (now dismissed).

It is further resolved that after the completion of the Inquiry Proceedings against Biju Jose Vadaken, it was decided by the Management accordingly to effect his dismissal in accordance with the serious charges which were proved against him and Fr. Ml.G. Raj had authority to do all acts in furtherance thereof.

It is resolved that Fr. M.G. Raj is hereby authorised to sign in his officiating capacity as the Administrator i.e. Authorised Signatory for and on behalf of Secretary / Treasurer/Trustees of the Ahmedabad Jesuit Schools' Society in legal proceedings before any Court, Tribunal or Judicial or Quasi Judicial Authority.

It is hereby further resolved that any act done on behalf of the Management i.e. Secretary/Treasurer/Trustees by Fr. M.G. Raj prior to the present resolution have all been done in good faith and to defend or take any necessary steps or any act done as was found expedient at the relevant point of time in any of the legal proceedings pertaining to the dismissal of Biju Joe Vadaken by Fr. M.G. Raj, the same are thereby ratified and accepted by the Management of the Ahmedabad Jesuit Schools' Society. It is hereby resolved by the Management that Fr. M.G. Raj has been authorised to act, appear, plead and/or sign any legal documents for and and on behalf of the Secretary / Treasurer / Trustees of the Ahmedabad Jesuit Schools' Society.

Authorised Signatory The Ahmedabad Jesuit Schools Society"

HC-NIC Page 39 of 43 Created On Wed Sep 21 05:17:57 IST 2016 22 A Division Bench of this Court, while examining the constitutional validity of Section 40A of the Act, 1972, pronounced as under:

"6 Section 40A of the Gujarat Secondary Education Act reads as follows :

40A Savings□Nothing contained in clause(26) of section 17, sections 34 and 35, and clause(b) of sub□section(1) and sub□sections(2),(3),(4) and (5) of section 36 shall apply to any educational institutions established and administered by a minority, whether based on religion or language.

7 Primarily grievance of the petitioners was that by virtue of Section 40A of the Gujarat Secondary Education Act, procedural safeguards available under Section 36 of the Gujarat Secondary Education Act to a teacher of the school run by private institution against action of dismissal, removal or reduction in rank has been taken away in case of minority educational institutions. We however, notice that even minority educational institutions are not exempt from requirement of clause(a) of sub□ section(1) of Section 36 of the said Act which reads as under :

36. Dismissal, removal and reduction in rank of certain persons.

(1) No person who is approved as a headmaster, a teacher or a member of non□teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until□

(a) he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him,...

8 Thus requirement of giving a reasonable opportunity to show cause against proposed action of dismissal, removal or reduction in rank is not done away with even in case of minority educational institutions. In any case, it is not necessary for us to dilate on this issue any further since as pointed out by the counsel for the respondents, this issue has been concluded by a judgement of Division Bench of this Court in case of Kadri Rasam Miya Bakshu Miya(supra) wherein it was observed as follows :

"10. In Bharat Sevashram Sangh (supra), the Apex Court examined the constitutional validity of the Gujarat Secondary Education Act, 1972. After examining the constitutional validity of the other provisions, the Apex Court also considered Section 40A of the Act. The

> Apex Court upheld the judgment of the High Court upholding the constitutional validity of the Gujarat Secondary Education Act, 1972. Hence, it is not open to this Court to HC-NIC Page 40 of 43 Created On Wed Sep 21 05:17:57 IST 2016 entertain the challenge to vires of Section 40A of the Act raised in this petition. Once the constitutional validity of the Act has been upheld by the Apex Court after considering the provisions of Section 40A of the Act, it is not open to this Court to go into the question as to at whose instance the challenge to the constitutional validity was examined by the Apex Court. Once the provisions of the Act have been held to be valid, the decision of the Apex Court is binding and we do not, therefore, entertain the challenge levelled by the petitioner against the constitutional validity of Section 40A of the Act."

In case of Bharat Sevashram Sangh, Supreme Court observed as under :

> " Section 40□A of the Act which was introduced into the Act by the Gujarat Act 25 of 1973 provides that nothing contained in clause (26) of section 17, sections 34 and 35 and clause (b) of sub□section (1), and sub□ sections (2), (3), (4) and (5) of section 36 shall apply to any educational institution established and administered by a minority whether based on religion or language. In view of this provision no minority institution also can complain about the Act."

We may record that in the said decision,the Division Bench had also noticed the judgement of Apex Court in case of Frank Anthony Public School Employees' Association(supra).

9 In view of this, challenge to vires of Section 40A of the said Act must fail."

23 The Tribunal thought fit to concentrate only on two issues discussed above and passed the impugned order directing the management to reinstate the respondent No.1 in service and initiate a de novo inquiry in accordance with law. While in a departmental proceeding, the disciplinary authority is the sole judge of facts and the Tribunal / High Court may not interfere with the factual findings, but the availability of judicial review even in the case of departmental proceedings cannot be doubted. The judicial review of an administrative action is feasible and the same has its application to its fullest extent in even the departmental proceeding where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The judicial review of the adequacy or inadequacy of HC-NIC Page 41 of 43 Created On Wed Sep 21 05:17:57 IST 2016 evidence is not permitted, but in the event of their being a finding which otherwise shocks the judicial conscience of the Court, it has a well□high impossibility to decry the availability of judicial review at the instance of an affected person. The

Tribunal instead of going into technicality should have looked into the matter from altogether a different angle i.e. whether the findings are based on some legal evidence or based on no evidence or are totally perverse or legally untenable.

24 For the foregoing reasons, the impugned order passed by the Tribunal is hereby quashed. The matter is remitted to the Tribunal for fresh consideration. The Tribunal shall without going into any other technicality consider whether the findings recorded by the disciplinary authority are based on some legal evidence or the case is one of no evidence or the findings are totally perverse or legally untenable. Let me remind the Tribunal once again that the adequacy or inadequacy of evidence is not permitted. The Tribunal shall hear the respective parties within a period of two months from the date of receipt of this order and thereafter within a period of one month pass an appropriate order in accordance with law. If any of the parties is dissatisfied with the order that may be passed by the Tribunal, then it shall be open for the concerned party to challenge the same in accordance with law.

(J.B.PARDIWALA, J.) FURTHER ORDER Since the respondent No.1 was appearing in person and he is not present at the time of the pronouncement of the judgment, the Registry shall inform about the judgment and order pronounced today to the HC-NIC Page 42 of 43 Created On Wed Sep 21 05:17:57 IST 2016 respondent No.1.

(J.B.PARDIWALA, J.) chandresh HC-NIC Page 43 of 43 Created On Wed Sep 21 05:17:57 IST 2016