by the trial court merges with the order passed by the appellate court, having regard to Explanation I appended to Order 9 Rule 13 of the Code a petition under Order 9 Rule 13 would not be maintainable. However, Explanation I appended to the said provision does not suggest that the converse is also true."

21. What matters for exercise of jurisdiction is the source of power and not the failure to mention the correct provisions of law. Even in the absence of any express provision having regard to the principles of natural justice in such a proceeding, the courts will have ample jurisdiction to set aside an ex parte decree, subject of course to the statutory interdict.

22. In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980 Supp SCC 420] this Court has held that an Industrial Tribunal has the requisite jurisdiction to recall an ex parte award. [See also Sangham Tape Co. v. Hans Raj (2005) 9 SCC 331 and Kapra Mazdoor Ekta Union v. Birla Cotton Spg and Wvg. Mills Ltd. (2005) 13 SCC 777]"

26. Contention of the learned counsel for the petitioner that in view of Section 19 & 20 of the Family Courts Act, 1984, the petitioner has only remedy of filing an appeal against the ex-parte judgment, is misconceived. Learned counsel for the petitioner could not point out any provision of Family Court Act or Rules made thereunder which prohibits the application of C.P.C.

27. Thus, in my considered opinion contention of the learned counsel for the petitioner that writ of prohibition can be issued restraining the Family Court from proceeding with the application filed by the respondent under Order IX Rule 13 C.P.C. is wholly misconceived as I have already held that in view of Section 10 of the Family Court Act, the provisions of Civil Procedure Code are applicable in proceedings before the Family Court. The Family Court has jurisdiction to entertain an application under Order IX Rule 13 C.P.C. and therefore, no writ of prohibition can be issued to respondent no. 1.

28. Learned counsel for the petitioner also tried to assail the order passed by respondent no. 1 on merits. In a writ of prohibition such a challenge cannot be entertained. Once, it is held that the court has competence/jurisdiction to entertain an application, the manner of exercise of the said jurisdiction cannot be seen while considering a writ of prohibition. The petitioner can challenge the same before the appropriate forum, if so advised but not in the present petition.

29. In view of the above discussion, the instant writ petition is not maintainable, and is accordingly **dismissed.**

(2024) 10 ILRA 236
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 04.10.2024

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ-C No. 7164 of 2024

C/M Ram Bharose Maiku Lal Inter College Thru Manager Sri Shree Kant Sahu & Anr. ...Petitioners

Versus

State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Mahendra Bahadur Singh, Vikas Singh

Counsel for the Respondents:
C.S.C.

A. Civil Law - Constiution of India,1950-Article 226-U.P. Intermediate Education Act,1921-Section 16(-D(4)-allegations of commercial activities on the educational institution's premises-show cause notices issued with subsequent replies submitted by the petitioner-the final order was passed by Special Secretary who conducted inspection and submitted report-report relied upon by the state government were not shared with the petitioners, denying them an opportunity to respond-Held, the High court quashed the State Government's order appointing an authorized controller to manage the affairs of the petitioner institution –the decision-making authority must provide a fair hearing to the affected party, and the order must be passed by the authority that heard the matter-In this case, the order was passed by the Special Secretary, who neither heard the arguments nor provided the petitioner access to relevant reports,creating procedural impropriety and violating natural justice-The Special Secretary acted as both investigator and adjudicator, this dual role breached the principle of nemo judex in causa sua(no person shall be a judge in their own cause), rendering the decision void due to apprehension of bias-the appointment of an authorized controller under section 16(D)(4) requires quasi-judicial decision-making, therefore adherence to procedural fairness and impartiality is mandatory-The impugned order is set aside and matter remanded to the State Government for a fresh decision in compliance with natural justice within three months.(Para 1 to 47) .(E-6)

List of Cases cited:

1. Chandashekhar Tiwari Vs St of UP & 5 Ors , SPLA No. 70 of 2023

2. C/M, Gautam Buddha Inter College & anr. Vs St. of UP & 4 Ors (2016) ALJ 126

3. A.K. Kraipak Vs U.O.I. (1969) 2 SCC 262

4. U.O.I., Thr. Its Secy. Ministry of Railway Vs Naseem Siddiqui (2004) SCC OnLine MP 678

5. Rattan Lal Sharma Vs M/C , Dr. Hari Ram (Co-Ed.) Higher Secondary School & ors.(1993) 4 SCC 10

6. A.U. Kureshi VS HC of Guj. (2009) 11 SCC 84

7. Ashok Kumar Yadav VS St. of Har. (1985) 4 SCC 417

8. Md. Yunus Khan Vs St. of U.P. (2010) 10 SCC 539

9. St. of Ori. Vs Binapani Dei (1967) 2 SCR 625: AIR 1967 SC 1269: (1967) 2 LLJ 266

10. U.O.I. Vs P.K. Roy (1968) AIR SC 850

11. Secy. to Govt., Trans. Deptt. Vs Munuswamy Mudaliar (1988) Supp SCC 651

12. St. of U.P. Vs Md. Nooh (1958) SCR 595: AIR 1958 SC 86

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri J.N. Mathur, learned Senior counsel assisted by Sri M.B. Singh, learned counsel for petitioner as well as learned Standing Counsel for respondents.

2. By means of present writ petition, the petitioners have challenged the order of the State Government dated 24.07.2024 wherein in exercise of powers contained in Section 16-D(4) of the Intermediate Education Act, 1921 (hereinafter referred to as 'Act of 1921') an authorized controller has been appointed to manage the affairs of the petitioner institution.

3. Two applications for impleadment have been filed on behalf of one Motilal Gupta who was the complainant in the present case and on whose complaint present proceedings have been initiated. While the second application has been filed on behalf of one Diwaker Sahu who is the member of Committee of Management claiming that he has sufficient interest to prosecute the said case against the petitioners.

4. Objections to the application for impleadment has been filed by the petitioner but after arguing the matter at some length, it was submitted that petitioner would not have any objection in case the applicants were heard as intervenors.

5. Accordingly, the applications are allowed to the extent that they are permitted to intervene in the present case. Accordingly, Sri L.P. Mishra, learned counsel as well as Sri Bhupendra Nath Tripathi, have been heard on behalf of the intervenors.

6. It has been submitted by learned Senior Counsel for petitioner that a show cause notice under Section 16-D(2) Act of 1921 was issued on 28.03.2022 wherein it was stated that certain commercial establishments were operating in the educational institution run by the petitioners and accordingly the same was contrary to the purposes for which recognition was granted to the petitioner.

7. The second allegation was in regard to the fact that the the last elections to the petitioner society were held on 25.05.2018 and their term which is of three years was expired on 18.05.2021 and accordingly the Committee of Management has become time barred and cannot be permitted to run the affairs of the society and on these two grounds it was proposed that the authorized controller be appointed to run the affairs of the petitioner educational institution.

8. On receipt of the show cause notice the petitioner had submitted a reply dated 05.06.2022. Immediately after submission of the said reply, another show cause notice was received by him on 25.08.2022.

9. It has been stated that in the subsequent notice dated 25.08.2022, the petitioner was asked to respond with regard to the allegations against the petitioner society which according to the petitioner are proceedings which could not have been undertaken in exercise of powers under Section 1-D(3) of Act of 1921 which pertain only to the educational institution run by the petitioner society. The petitioners had submitted a detail reply on 12.10.2022. It is in the aforesaid circumstances that an order dated 15.11.2022 was passed in exercise of powers under Section 16-D(4) of Act of 1921 referring the matter to the State Government to initiate proceedings against the petitioners for appointment of an authorized controller.

10. The petitioner being aggrieved by the order dated 15.11.2022 passed by the Additional Director of Education, Uttar Pradesh preferred a representation to the State Government stating that the reply submitted by him has not been considered and the order has been passed without giving any opportunity of hearing and accordingly the State Government concurred with the objections raised by the petitioners and by means of his order dated

16.02.2023 directing the Director of Education to pass a fresh order after giving due opportunity of hearing to the petitioner. While remanding the matter to the Director of Education, specific directions were issued that the land records of the petitioner be duly inspected before any finding is returned on the allegations levelled against the petitioners. It is in pursuance of the order dated 16.02.2023 that proceedings were initiated afresh by Director of Education and the petitioner again submitted a detail reply on 10.05.2023. While submitting his reply, the petitioner had taken a specific plea that the parent society was different from the committee of Management which is running the educational institution.

11. He has submitted that for running the educational institutions certain land records were submitted to the Education Department for seeking recognition and educational institution is running only on the land on which due permission was accorded by the State Government. It was further submitted that in the meanwhile the parent society had purchased certain other lands of which they are the owners and it is on this land that commercial activities going on. It was stated in detail that two lands are separate and distinct one on which the educational institution is running while the second is the land which is owned by the society and has no relation to the educational institution.

12. It has been submitted that the Director after submission of the reply by the petitioner passed an order dated 27.07.2023 under Section 16-D(3) of Act of 1921, referring the matter of the petitioner to the State Government. It is the case of the petitioners that the order dated 27.07.2023 was never supplied to the petitioner and it is only in the counter affidavit the same has been annexed by the State Government. The State Government taking cognizance of the report submitted by the Director on 27.07.2023, issued notice to the petitioners wherein it was stated that the matter would be heard by the Special Secretary, Government of Uttar Pradesh, Sri Alok Kumar. The petitioners were asked to submit their reply and also to be present on 25.09.2023 in case they wish to be heard in person. Subsequently, the matter was fixed on 06.10.2023 where again the petitioners had submitted a detail reply replying to the two issues on which previously the show cause notice was issued to the petitioners.

13. After submission of the reply of the petitioners on 06.10.2023 and 10.10.2023 by means of order dated 07.11.2023, it was the Special Secretary Government of Uttar Pradesh who was hearing the matter thought it fit that the report with regard to the land use, he referred to the District Magistrate, Lucknow seeking a reply as to whether the land of the educational institution has been utilized for commercial activities while with regard to the status of the Committee of management of the educational institution the Director of Education was submitted to submit his reply as to whether the society has become time barred.

14. Before the aforesaid reports could be submitted, the petitioner received an order dated 07.03.2024 wherein it was stated that the hearing would now be conducted by the Additional Chief Secretary, Department of Secondary Education and the petitioners were directed to be present before him on 14.03.2024. In response to the order dated 07.03.2024, the

petitioners again filed a detailed reply on 14.03.2024 and also appeared before the Additional Chief Secretary. It was noticed at this stage that neither the report of the District Magistrate or the Director of Education as directed previously on 07.11.2023 were on record and accordingly the Special Secretary, Sri Alok Kumar who was hearing the matter previously was directed to submit his report. It is in pursuance of direction of the Additional Chief Secretary that Sri Alok Kumar, Special Secretary inspected the petitioners' premises on 30.05.2024 and submitted its report. Again at this stage, it has been informed that the report dated 30.05.2024 was never supplied to the petitioners.

15. It has further been stated that the report was not submitted by the District Magistrate or by the Director of Education which is evident from the fact that by means of letter dated 21.05.2024, the said fact was brought on record and a reminder was sent to the authorities concerned to see that the aforesaid reports are submitted to the State Government for taking a decision in the said matter. It is after the aforesaid that the impugned order dated 24.07.2024 has been passed wherein the authorized controller has been appointed to run the petitioners institution and the finding with regard to both the allegations has attained finality where it has been held that commercial activities is being run on the petitioner institutions and also that the petitioner's society has become time barred.

16. Learned Senior Counsel while assailing the aforesaid orders has submitted that the order is hit by the principles of bias inasmuch as firstly Sri Alok Kumar, Special Secretary, Government of Uttar Pradesh who had himself inspected the premises and submitted his report has relied upon his own report dated 30.05.2024 while passing the impugned order. He has submitted that in fact the matter was heard by the Additional Chief Secretary and no hearing took place before the Special Secretary, Sri Alok Kumar while a perusal of the entire order would indicate that he has referred the hearing which took place before the Additional Chief Secretary and the documents which were filed before him relying upon the said findings he has passed the impugned order.

17. It has further been submitted that a perusal of the entire impugned order would indicate that though the response of the petitioners has been recorded but no submissions or contentions or facts raised by the petitioners has been considered in the entire judgment and accordingly the said order has been passed without any application of mind and is in violation of principle of natural justice inasmuch as the entire order has been passed relying upon the reports which has never been supplied to the petitioner prior to passing of the impugned order.

18. Learned counsel for respondents on the other hand has opposed the writ petition.

19. It has been vehemently submitted by Dr. L.P. Mishra, that there is no doubt with regard to the fact that commercial establishment and shops are being run on the educational institution and the same activities are prohibited and accordingly the Committee of Management is acting in gross violation of the statutory provisions and accordingly supported the impugned order wherein the authorized controller has been appointed. He has further submitted that even if the impugned order cannot be set aside merely on the

basis that there was violation of principle of natural justice. He submits that even if the petitioners were in fact afforded an opportunity of hearing still they would be unable to prove that the commercial establishments were running on the educational institution and it was an established fact that the petitioners were running commercial establishment in the educational institutions and hence submits that the present order cannot be set aside on the basis of violation of principle of natural justice.

20. I have heard learned counsel for parties and perused the record.

21. From the facts as narrated herein-above are not disputed with the parties concerned and accordingly they need not be reiterated. It is noticed that the Director of Education had concluded the proceedings under Section 16(D)-3 after giving an opportunity of hearing to the petitioner where he recorded his prima facie satisfaction and referred the matter to the State Government for passing appropriate order for appointment of authorized controller in exercise of powers under Section 16-D(4). This Court presently concerned in the present case with the proceedings which had undertaken by the State Government in exercise of powers under Section 16-D(4) of Act of 1921. It is in the said proceedings that initially the petitioners were informed that the matter would be heard by the Special Secretary, Government of Uttar Pradesh Sri Alok Kumar. Proceedings were in fact held by Sri Alok Kumar before whom the petitioners had filed their response and he considering the dispute in the present case had thought it proper to seek the report of the District Magistrate as well as the Director of Education with regard to two issues which were to be decided in the present case.

22. The District Magistrate was directed to submit his report with regard to the land use made by the petitioners' educational institution and report as to whether the commercial establishments were running on the said educational institution. While on the other hand the Director of Education was required to submit a report with regard to the status of the petitioners' Committee of Management and inform as to whether it was time barred Committee of Management or regular elections had taken place in accordance with law.

23. Again there is dispute with regard to the fact that none of these two reports were submitted till the time of passing of the impugned order. Though report of the District Magistrate was never received but it seems that Director of Education submitted its report on 04.04.2024 which was considered by the State Government while passing the impugned order.

24. A plea has been taken that even the report dated 14.04.2024 was never given to the petitioners.

25. I have considered the rival submissions and perused the record. The 1st issue which was considered by this court is with regard to the violation of principles of natural justice during the hearing before the State government. Bias been alleged by the petitioner in as much as the final hearing a taken place on 14/03/2024 before the Additional Chief Secretary, Secondary Education ,subsequent to which the final orders were passed by Sri Alok Kumar, Special

Secretary before whom no hearing had taken place.

26. The State government has been given the powers to appoint and authorised controller in excise of powers under section 16-D(4) Of the U.P Intermediate Education Act, 1921. The Director Education as to record his satisfaction with regard to the existence of grounds mentioned in section 16-D(3)(i) to (vii) of the act of 1921, before forwarding his recommendations to the State government. At the stage of section 16-D(3) principle of natural justice are incorporated as part of the statutory provision itself, in as much as the Director of Education is mandated to give a show cause notice before forwarding his recommendations. It is on the recommendations of the Director of Education, order is passed by the State government for appointment of the authorised controller. The question as to whether the state government has to afford opportunity of hearing to the committee of management before passing any order in exercise of powers under section 16-D(4) of the act of 1921 was considered by division bench of this court in the case **of Chandashekhar Tiwari vs State of UP and 5 others in Special Appeal No. 70 of 2023** where this court relied upon the judgement of single judge in the case of **Committee of Management, Gautam Buddha Inter College and another vs State of UP and 4 others (2016) ALJ 126** wherein it has been held that although the statute provides for opportunity of hearing at the stage of enquiry by the director but in case there is recommendation by Director to supersede the committee of management, it is implicit in the provision that State government would accord hearing to the affected party before it supersede the committee of management. It was held that, the fact that decision-making authority is a State government and is enjoined for duty to record reasons.

27. It was further observed that the purpose of affording hearing to provide opportunity to the committee of management to place its defence in context of recommendations made by the Director of Education. It would get opportunity to impress upon the state government that on the basis of material available on record, the law does not warrant appointment of an authorised controller.

28. Accordingly, a perusal of the statutory scheme as well as the judgement of this court in the case of **Chandashekhar Tiwari (Supra)** leaves no doubt that even the State government while taking a decision to consider the recommendations of the director, is required to give an opportunity of hearing to the committee of management and also give reasons for its orders.

29. In the present case the the petitioners were informed by means of letter dated 27/07/2023 that the proceedings would be conducted before Special Secretary, Secondary Education, Mr Alok Kumar, and were required to be present before him on 14/03/2024. The petitioners appeared on the date fixed in also filed a response, but by means of letter dated 07/03/2024 they were required to be present before the Additional Chief Secretary, Secondary Education on 14/03/2024. Again, the petitioners appeared before the Additional Chief Secretary and filed their reply and the matter was also heard and argued on behalf of the petitioners. No date was fixed thereafter, and the order in the said case pursuant to the hearing before the Additional Chief

Secretary was pronounced by Special Secretary, Secondary Education, Mr Alok Kumar. In the aforesaid circumstances the question which was also in consideration is as to whether the order must be passed by the person before whom the hearing took place , or can be validly passed by another person or authority before whom no hearing took place, on a bare perusal of the record of proceedings.

30. To consider the aforesaid question it has to be determined as to whether the proceedings under section 16-D(4) of the act of 1921 are administrative in nature or quasi-judicial. In case the State government was deciding a lis between the parties, or deciding the rights, then it would be acting as an tribunal. In the present case the long list of contingencies provided for in section 16-D(3) of the act of 1921 all of which pertain to the inaction of the committee of management and circumstances where there were duty-bound to do otherwise. The allegations may also extend to financial impropriety and acting contrary to the scheme of administration. It is in the backdrop of the aforesaid provisions that this Court is of the considered view that while passing an order appointing authorised controller a definite finding has to be recorded against the committee of management for being guilty of the grounds contained in section 16-D(3) of Act of 1921, and therefore they have to give an opportunity of hearing to the committee of management, and record the reasons for appointing the authorised controller. While passing an order under section 16-D(4) of act of 1921 the State government is discharging quasi-judicial functions, and therefore they have to provide in opportunity of hearing to the committee of management and follow the principles of natural justice.

31. To exercise the power of the state government under section 16-D(4) of act of 1921 , it has to be delegated to an authority who would be exercising the powers on behalf of the state government. As already discussed while passing an order under section 16-D(4) the State government has to give opportunity of hearing to the committee of management, and the authority who is empowered to exercise the powers of the state government has to pass necessary orders after giving due opportunity of hearing. There is no doubt that in the present case the Additional Chief Secretary, Secondary Education has given an opportunity of hearing to the petitioners, but the order was passed by the Special Secretary Secondary Education before whom no hearing took place. The manner of decision-making in the present case where the decision-making process has been divided into 2 parts where one authority has given an opportunity of hearing, while another has passed the order, is alien to the concept of fair hearing, as one who decides does not hear the party, he does not get an opportunity of clearing doubt in his mind by reasoned arguments, and in such situation the opportunity of personal hearing becomes an empty formality.

32. The Supreme Court in the case **of Gullapalli Nageshwar Rao v. A. P. State Road Transport Corporation, AIR 1959 SC 308**, has observed "This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the argument and the party appearing to persuade the authority by reasoned argument to accept his point of

view. If one person hears and another decides, then personal hearing becomes an empty formality." Accordingly, in the instant case by the order has been passed by the Special Secretary is illegal and arbitrary and clearly violative of principles of natural justice.

33. The 2nd ground on which the impugned order has been assailed in the fact that the Special Secretary had himself conducted the enquiry on 30/05/2024 and submitted his report to the State government. It has submitted that during the hearing before the Additional Chief Secretary on 14/03/2024 it was recorded that the reports of the District Magistrate and the Director education were not on record, and in the above circumstances the special Secretary was directed to submit his report. The report dated 30/05/2024 was never supplied to the petitioner but has been relied by the State government while passing the impugned order dated 24/07/2024.

34. Considering the ground of bias as alleged by the petitioner it is relevant to note that "Bias" means an operative prejudice whether conscious or unconscious, in relation to party or issue. Such operative prejudice may be the result of a preconceived opinion or a predisposition or a determination to decide the case in a particular manner, so much so that it does not leave the mind open. Accordingly, the rule strikes against those factors which may improperly influence as arriving at the decision in a particular case. A person for whatever reason, cannot take on objective decision on the basis of evidence on record, shall be said to be biased.

35. In ***A.K. Kraipak v. Union of India,*** **(1969) 2 SCC 262**, the Supreme Court held that the aim of rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. Concept of natural justice has undergone a great deal of change. Initially recognized as consisting of two principles, i.e., no one shall be a Judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, a third rule is now envisaged i.e. quasi-judicial inquiries must be held in good faith, without bias and not arbitrarily.

36. In ***Union of India, Through Its Secretary, Ministry of Railway v. Naseem Siddiqui,*** **2004 SCC OnLine MP 678**, the Court held that one of the fundamental principles of natural justice is that no man shall be a Judge in his own cause and this principle in turn consists of seven well-recognized facets, one of them being 'the adjudicator shall be impartial and free from bias' and 'if any one of these fundamental rules is breached, the inquiry will be vitiated'. It was also held that a domestic inquiry must be held by an unbiased person so that he can be impartial and objective in deciding the subject matter of the inquiry and should have an open mind till the inquiry is completed. IO should neither act with bias nor give an impression of bias.

37. In ***Rattan Lal Sharma Vs. managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors, (1993) 4 SCC 10*** , the Supreme Court held that no one can be a Judge in his own cause, which is a common law principle derived from the Latin maxim 'nemo debet esse judex in propria causa'. In A. U. Kureshi v. High Court of Gujarat, (2009) 11 SCC 84, the Supreme Court referring to the said principle held that failure to adhere to this principle creates an apprehension of

bias on the part of the Judge and referred to the observations of Justice P.N. Bhagwati in Ashok Kumar Yadav v. State of Haryana, (1985) 4 SCC 417, as follows:—

"...

One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the judge is actually biased or has in fact decided partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias 'it is in accordance with natural justice and common sense that the judge likely to be so biased should be incapacitated from sitting'. The basic principle underlying this rule is that justice must not only be done but must also appear to be done."

38. It was further held that failure to observe the principle that no person should adjudicate a dispute which he/she has dealt with in any capacity, creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case in which he is interested and the question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision. In ***Mohd. Yunus Khan v. State of Uttar Pradesh*, (2010) 10 SCC 539**, the Supreme Court observed that existence of an element of bias renders the entire disciplinary proceedings void and reiterated that apprehension of bias operates as a disqualification for a person to act as an adjudicator. Anyone who has personal interest in the disciplinary proceedings must keep himself away from such proceedings else the entire proceeding will be rendered null and void. I may quote an observation of the Supreme Court, as follows:—

"Principles of natural justice are to some minds burdensome but this price - a small price indeed - has to be paid if we desire a society governed by the rule of law".

39. In this context, it would be relevant to refer to a few passages from the judgment of the Supreme Court in ***Rattan Lal Sharma (supra),*** as follows:—

"9. In Administrative Law, rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures. On the question whether the principles of natural justice are also applicable to the administrative bodies, formerly, the law courts in England and India had taken a different view. It was held in Franklin v. Minister of Town and Country Planning [[1947] 2 All ER 289 (HL)] that the duty imposed on the minister was merely administrative and not being judicial or quasi-judicial, the principle of natural justice as applicable to the judicial or quasi-judicial authorities was not applicable and the only question which was required to be considered was whether the Minister had complied with the direction or not. Such view was also taken by the Indian courts and reference may be made to the decision of this Court in Kishan Chand Arora v. Commissioner of Police, Calcutta [(1961) 3 SCR 135 : AIR 1961 SC 705]. It was held that the compulsion of hearing before passing the order implied in the maxim 'audi alteram partem' applied

only to judicial or quasi-judicial proceedings. Later on, the law courts in England and also in India including this Court have specifically held that the principle of natural justice is applicable also in administrative proceedings. In Breen v. Amalgamated Engineering Union [[1971] 1 All ER 1148 (CA)] Lord Denning emphasised that statutory body is required to act fairly in functions whether administrative or judicial or quasi-judicial. Lord Morris observed (as noted by this Court in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248, 285 : (1978) 2 SCR 621] decision) that:

"We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed."

40. In **State of Orissa v. Binapani Dei *[(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266]*** this Court also accepted the application of the principle of natural justice in the order which is administrative in character. It was observed by Shah, J.:

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences ... must be made consistently with the rules of natural justice."

Similar view was also taken in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] and the observation of Justice Hegde may be referred to : (SCC p. 272, para 20)

"... Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries."

There are number of decisions where application of principle of natural justice in the decision-making process of the administrative body having civil consequence has been upheld by this Court but it is not necessary to refer to all such decisions. Prof Wade in his Administrative Law (1988) at page 503, has very aptly observed that the principles of natural justice are applicable to almost the whole range of administrative powers.

10. Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameters of natural justice. In Russell v. Duke of Norfolk [[1949] 1 All ER 109 (CA)] Tucker, L.J. observed:

"... There are, in my view, no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

41. It has been observed by this Court **in Union of India v. P.K. Roy *[AIR 1968 SC 850]:***

"The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

42. Similar view was also expressed in **A.K. Kraipak *case [(1969) 2 SCC 262 : (1970) 1 SCR 457].*** This Court observed as follows:

"... What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the Inquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

Prof. Wade in his Administrative Law has succinctly summarised the principle of natural justice to the following effect:

"It is not possible to lay down rigid rules as to when the principles of natural justice are to apply : not as to their scope and extent. Everything depends on the subject-matter, the application for principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

43. One of the cardinal principles of natural justice is nemo debet esse judex in propria causa (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in **Secretary to Government, Transport Department v. Munuswamy Mudaliar [1988 Supp SCC 651]** that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in **State of U.P. v. Mohd. Nooh [1958 SCR 595 : AIR 1958 SC 86].** In the said case, a departmental inquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the inquiry then left the inquiry, gave evidence against the employee and thereafter resumed to complete the inquiry and passed the order of dismissal. This Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.

44. In the instant case in paragraph 5 of the impugned order it has been stated that on 14/03/2024 a decision was taken to direct Sri Alok Kumar, Special Secretary Secondary Education to conduct a spot inspection along with other officials of the education department. The said spot inspection was conducted on 30/05/2024 and was submitted to the State government. Coincidentally, Sri Alok Kumar, Special Secretary Secondary Education was delegated the task of deciding the said issue on behalf of the state government and has proceeded to pass the impugned order relying upon his own report dated 30/05/2024. The report dated 30/05/2024 was never supplied to the petitioners. In the present case, the author of the impugned order i.e Sri Alok Kumar, Special Secretary Secondary Education having himself participated in making necessary enquiries and submitting the report in this regard could not have been asked to subsequently adjudicate the said issue and passed necessary orders on behalf of the state government. Needless to say, the petitioners had the right to object to the report submitted by Sri Alok Kumar, had the same been given to them, but the same authority contrary to the canons of principles of natural justice has proceeded to pass the impugned order relied on his own report while passing the impugned order, and accordingly there is no doubt that the impugned order is hit by the principle of "bias".

45. It is for the aforesaid reasons that this Court is of the considered view that the impugned order is illegal and arbitrary and violative of article 14 of the Constitution of India and accordingly deserves to be set aside. Though it was vehemently contended that even if the opportunity had been given to the petitioners it would have made no difference to the outcome, inasmuch as the society is time-barred and there is no doubt that they are conducting commercial activities on the premises of education institution. Going into the aforesaid aspect the present case, would lead us into the factual controversy involved in the present case, which should appropriately to be dealt with by the State government in exercise of powers under section 16-D (4) of the act of 1921 at the 1st instance. This Court is of the view that the manner in which the enquiry was conducted leading to the passing of the impugned order, has been in gross violation of the principle of natural justice and therefore the matter deserves to be remanded back to the State government for being considered afresh after following the natural justice. Accordingly at this stage we would not delve into the factual controversy to answer the objections raised by the counsel for the opposite parties and the intervenors.

46. In light of the above the impugned order dated 24/07/2024 is set aside. The matter is remanded back to the State government for taking a decision afresh in accordance with law and after following the principle of natural justice and affording full opportunity of hearing to the petitioners. It is expected that the State government shall proceed with expedition and within a period of 3 months from date a certified copy of the order is placed before them in accordance with law.

47. The writ petition stands **allowed**.
