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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **W.P.(C) 4006/2021 & CM APPL. 12085/2021**

Between: -

MASTER SINGHAM
AGED ABOUT 10 YEARS OLD
THROUGH NATURAL GUARDIAN
MR. GAURAV GOYAL
PRESENTLY RESIDING AT
19 C / 20A BLOCK UA,
JAWAHAR NAGAR -110007 ...PETITIONER

(Through: Mr. Vaibhav Sethi, Ms. Priya Pathania, Mr. Vikhyat Oberoi, Ms. Jagriti Pandey, Mr.Onmichon Ramlal, Mr. Mohit Garg, Mr. Rana Bed, Ms. Diksha Kakkar and Mr. Aditya Khanna, Advocates)

VERSUS

DIRECTORATE OF EDUCATION
GOVT. OF NCT OF DELHI
PRIVATE SCHOOL BRANCH
OLD SETT: DELHI 54
THROUGH DIRECTOR (EDUCATION)
…RESPONDENT NO. 1

SANSKRITI SCHOOL
DR. S. RADHAKRISHNAN MARG
CHANAKYAPURI, NEW DELHI 110021

THROUGH PRINCIPAL …RESPONDENT NO. 2

(Through: Mr. Santosh Kumar Tripathi, Standing Counsel for GNCTD with Mr. Arun Panwar, Mr. Pradyumn Rao and Mr. Utkarsh Singh, Advocates for respondent No.1
Mr. Siddharth Nath, Ms. Khushboo Hora and Mr. Anunay Chowdhary, Advocates for respondent No.2)

% Pronounced on: 05.12.2023

J U D G M E N T

1. *Satyam Vada, Dharmam Chara*, which literally translates to 'speak the truth, pursue righteousness', referenced from the *Taittireeya Upanishad*, reckons the conviction of the ancient education system of Bharat, wherein, the aforesaid exhortation was sermonized during the convocation ceremonies of disciples to sum up the objective of education. It is, undoubtedly, the pillars of truth which make the superstructure of education stand firm and tall. It is also a truism that nothing could refine and develop human intellect except *vidya* (education). In spiritual realm, it leads to liberation of self and in the mundane spheres, it encompasses a holistic growth and prosperity.

2. The exaltation of ethics and morality has invigorated education to bloom to its pinnacle and the education would lose its purpose if the said conditions were negated from it. In fact, it is the duty of an egalitarian society to march towards accessible education for all, guided by the tenets of morality. The pious fountain of education, therefore, must be reached out with utmost integrity and any

surreptitious attempt to dislodge such piousness must be checked and corrected.

3. The present case, on the contrary, enunciates a harrowing tale of blatant subversion of a welfare scheme enacted for extending the benefit of quality education to the Economically Weaker Sections (EWS) of the society. The case at hand, reflects a tormenting state of affairs where the opulent class is putting in blood, sweat and tears to reap the benefits of EWS reservation at the expense of the economically marginalized candidates. A calculated attempt at subverting the cherished constitutional vision of education for all is under scrutiny in this case.

4. The Government of National Capital Territory of Delhi, with an objective of fulfilling the aspirations of students belonging to economically downtrodden sections of the society to attain quality education, in exercise of the powers conferred by Section 3(1) of the Delhi School Education Act, 1973 (18 of 1973) read with Rule 43 of the Delhi School Education Rules, 1973 under the provisions of the Right of Children to Free and Compulsory Education Act, 2009, passed an Order, namely Delhi School Education (Free seats for Students belonging to Economically Weaker Sections and Disadvantage Group) Order, 2011 (hereinafter as *'2011 Order')*, providing free seats for such students. As per the 2011 Order, all the schools are required to admit children belonging to economically weaker section in class one to the extent of at least twenty-five percent of the strength of that class and provide free and compulsory elementary education till its completion.

5. Clause 2(c) of the said Order defines a child belonging to weaker section as the one whose parents have total annual income of less than one lakh rupees from all sources and who have been staying in Delhi for the last three years.

6. The petitioner in the instant case is a minor student whose father, on 08.01.2013, got the requisite income certificate issued by the Tehsildar in the office of the Deputy Commissioner (New Delhi District) to secure admission for his son in Sanskriti School, New Delhi. The said certificate assessed the annual income of the petitioner's father to be Rs. 67, 200/- from all sources.

7. The facts of the case show that the petitioner got admitted in respondent no.2-School in 2013, availing the quota for EWS on the basis of the aforementioned income certificate of his father.

8. The domicile certificate dated 18.02.2012, issued by the Executive Magistrate in the office of the Deputy Commissioner (New Delhi District) and duly attested by a Judicial Member of the Customs, Excise and Service Tax Appellate Tribunal, was also submitted to show that the petitioner resided along with his parents in Sanjay Camp, Chanankya Puri, Delhi.

9. After admission, the petitioner continued to study in respondent no.2-School as an EWS category candidate without any difficulty till 2018. However, the controversy began on 03.01.2018, when the father of the petitioner wrote letters to the Principal of respondent no.2-School along with the admission form of the sibling of the petitioner, seeking alteration in the category of petitioner from EWS to General category and change in address of the petitioner's residence. Since the said letter raised the eyebrows of respondent no.2-School, it was

forwarded to respondent no.1-Directorate of Education (hereinafter as *'DOE'*) and accordingly, enquiry from the District Magistrate, Jamnagar House, Delhi (DM, Jamnagar) about the income certificate of the father of the petitioner was directed. The DM, Jamnagar and SDM, M.B. Road, Saket, Delhi, *vide* letters dated 21.02.2018 and 07.03.2018, respectively, conveyed to respondent no.1-DOE that the said income certificate is found to have been issued by the office.

10. However, a complaint dated 15/16.03.2018 was filed by respondent no.2-School against the father of the petitioner in P.S. Chanakya Puri, on the ground that the copy of the Voter IDs produced by him was forged as it did not reflect the correct date of registration as a voter. While examining the veracity of the documents from the office of the Chief Electoral Officer, Kashmere Gate, it was found that the said Voter IDs were registered since 13.02.2018 and not on 13.02.2016. The said complaint was subsequently registered as an FIR bearing no. 0015/2018.

11. Pursuant to the FIR, a report was filed by the DM, Jamnagar on 27.03.2018 and sent to respondent no.1-DOE, which stated that on 22.03.2018, the SDM along with the Tehsildar and Civil Defence volunteers had gone for a visit at Sanjay Camp, Chanankyapuri, New Delhi. During the said visit, it recorded the statements of 10 residents who deposed that the family of the petitioner never stayed in the camp.

12. On 31.03.2018, the order was passed by respondent no.1-DOE, whereby, the petitioner's admission was cancelled for the first time. On the basis of the report of District Magistrate, New Delhi and Investigation report of DCP (South), it was concluded that the date of

birth certificate of the petitioner was fraudulently obtained as the petitioner was born seven months before the date of birth mentioned in the certificate submitted at the time of securing admission in respondent no.2-School.

13. The said report also suggests that the income certificate was obtained by misrepresentation of the actual income by the petitioner's father, whereby, he declared his total income from all the sources as Rs. 67,200/-. On the contrary, the report of the DCP (South) shows that the self-declared income as per Income Tax Returns (ITR) of the petitioner's father for the year 2012-13 himself alone was Rs. 4,23,850/-.

14. It was also found that the father and the mother of the petitioner never resided at the Sanjay Camp, Chanakyapuri, New Delhi, as claimed during the time of the admission. On the basis of the enquiry report of SDM (Chanakyapuri), on 18.04.2018, the domicile certificate as well as the income certificate was declared to be null and void by the District Magistrate.

15. The petitioner, thereafter, preferred the first writ petition being W.P. (C) No. 6572/2018 against the cancellation of his admission *vide* order dated 31.03.2018, which was allowed on 02.07.2018 because no show cause notice was issued to the petitioner before passing the cancellation order. Subsequently, respondent no.1-DOE issued a show cause notice dated 20.07.2018 with a view to grant personal hearing, calling the father of the petitioner to explain as to why the admission of the petitioner should not be cancelled.

16. However, on 13.08.2018, respondent no.1-DOE, on the basis of status report obtained in the aforementioned FIR, once again cancelled

the admission of the petitioner. This order was further assailed in the second writ petition filed by the petitioner being W.P. (C) 8791 of 2018 and the said writ petition was allowed on 07.01.2019, on the ground of the violation of principles of natural justice, without recording any comment on the merits of the case.

17. A show cause notice was, thereafter, issued on 24.01.2019, calling upon the father of the petitioner to explain as to why the admission of the petitioner should not be cancelled. In pursuance of the same, personal hearings in the form of meetings were arranged by respondent no.1-DOE on several occasions to enable the petitioner and his father to present their case.

18. The respondent no.1-DOE, after duly considering the submissions made by the petitioner's father in the aforesaid personal hearings, passed a detailed order on 09.02.2021, cancelling the admission of the petitioner. This order was communicated to the petitioner by respondent no.2-School *vide* letter dated 15.02.2021.

19. The petitioner, therefore, has filed the instant writ petition against the show cause notice dated 24.01.2019 and the resultant order dated 09.02.2021, both passed by respondent no.1-DOE, whereby, the admission of the petitioner has been cancelled by respondent no.2-School. The petitioner *vide* the instant petition is also challenging the letter issued by respondent no.2-School on 15.02.2021, wherein, in pursuance of the order passed by respondent no.1-DOE, the admission of the petitioner stands cancelled with effect from 31.03.2021.

SUBMISSIONS

20. Learned counsel appearing on behalf of the petitioner submits that the impugned order is passed in blatant violation of principles of

natural justice as neither the petitioner nor his father were afforded an opportunity of effective hearing. He submits that the said order suffers from procedural impropriety inasmuch as the order of cancellation of the admission of the petitioner was passed by an authority which did not conduct the personal hearing. According to him, any authority which was not present at the time of hearing cannot pass an order without actually hearing the matter afresh.

21. He submits that the cancellation order in the present case would have been sustainable in the eyes of law, only if the successor officer had conducted a fresh proceeding in the matter. Learned counsel has placed reliance on the decision passed by the Hon'ble Supreme Court in the cases of ***Automotive Tyre Manufacturers Association v. Designated Authority and Others***[1] and ***Union of India v. Shiv Raj***[2], to submit that the said order is vitiated as it flagrantly violates the principles of natural justice.

22. Learned counsel for the petitioner submits that neither there was any just cause nor respondent no.1-DOE has the requisite jurisdiction to pass the impugned order. It is the case of the petitioner that under Section 3 of the Delhi School Education Act, 1973, Rule 26 of the Delhi Right of Children to Free and Compulsory Education Rules, 2011 read with Clause 10 of the Notification No. 15(172)/DE/Act/2010/69 dated 07.01.2011, there is no power bestowed upon respondent no.1-DOE to act upon the application of the petitioner and conduct an investigation of the nature in the impugned order.

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[1] (2011) 2 SCC 258
[2] (2014) 6 SCC 564

23. He further tries to impress upon the fact that the income certificate of the petitioner's father was duly issued by the concerned authority after the necessary verification was carried out by the bailiffs and therefore, there is no reason to assail the veracity of the same. He contends that once the genuineness of the said certificate has been corroborated by various Government offices, it is erroneous to cancel the admission of the petitioner on the ground of falsity of the said document.

24. Learned counsel further submits that, if the said allegation on the cancellation of the income certificate is based on the letter dated 18.04.2018 of the District Magistrate, New Delhi District, the said letter is flawed as it itself derives its conclusion from, *inter alia* the statement of the erstwhile SDM that the said certificate was issued only after due verification of the available documents.

25. It is also contended by the learned counsel that the falsity of the said income certificate cannot be established on the ground that the petitioner's father undertook various travels outside India in the year 2012-13. According to him, all the alleged abroad trips were done in official capacity as a part of his employment and the expenses incurred during the concerned trips were borne by his employer.

26. Learned counsel further submits that the ITR was filed upto 31.03.2013, whereas, the income certificate was issued on 08.01.2013, which implies that the additional income of 3 months could not be taken into account by the concerned authority while issuing the income certificate. Since the petitioner's father did not earn any taxable income for the financial years 2010-11 and 2011-12, he did not file any ITR during the same period. It is, therefore, submitted by

the learned counsel for the petitioner that in the absence of any evidence to the contrary, it must be presumed that the income certificate was genuine and does not suffer from any illegality.

27. Learned counsel appearing on behalf of the petitioner, while referring to the domicile certificate of the petitioner, submits that the veracity of the said certificate cannot be repudiated on the basis of testimony of randomly chosen handful of people, when it was issued by a competent authority. According to him, the precedence must be given to the issuing public authority as against arbitrarily selected 10 persons. He further submits that, despite repeated requests were made to the concerned authority, no opportunity was afforded to the petitioner to cross-examine the said persons and thus, in the absence of any such reasonable opportunity, the genuineness of the domicile certificate cannot be assailed.

28. He also submits that a reasonable opportunity of hearing should have been allowed to the petitioner before cancelling his birth certificate. According to him, had the petitioner been called upon by the concerned authorities to present his explanation, he would have controverted the contents of the said birth certificate. It is, therefore, submitted by the learned counsel that the petitioner's admission was sought on legitimate grounds and there is no cogent reason for the respondents to cancel the same on the alleged commission of fraud.

29. *Per contra*, learned counsel appearing on behalf of the respondents vehemently oppose the submissions made by the learned counsel for the petitioner. Learned counsel for respondent no.1-DOE, while relying on his counter affidavit, submits that the instant writ petition is based on false, fabricated and concocted statements and

documents. According to him, due to the illegal and fraudulent act on the part of the petitioner's father, respondent no.1-DOE was constrained to direct respondent no.2-School to declare that the admission of the petitioner was obtained by misrepresentation and is illegal and *void ab initio*.

30. He submits that the father of the petitioner has made a false and fraudulent self-declaration claiming his income to be Rs. 67,200/- per annum from all sources with an aim of obtaining the income certificate from the Revenue Department, whereas, his actual income for the said year is much higher than the said amount. He contends that the income certificate as well as the domicile certificate was obtained fraudulently through misrepresentation of facts and therefore, both the documents came to be cancelled *vide* orders dated 18.04.2018 and 07.05.2018 by the competent authorities.

31. Learned counsel for respondent no.1-DOE then takes this court through the affidavit dated 27.04.2023, filed on behalf of District Magistrate, New Delhi, to indicate that the income as well as the domicile certificate were duly cancelled by the competent authorities and based upon the same, the decision of cancellation of the petitioner's admission was taken by respondent no.1-DOE. The relevant paragraphs of the said affidavit read as under:

> *"9. It is submitted that upon the request of Dy. Director (PSB) through letter no* ***F.No.DE/PSB/2018/WPC1372/2018/22469*** *Dated 19.02.2018, District Magistrate, New Delhi District has sent verification report bearing no* ***F.no: (1405)/SDM (Ch. Puri)/2017/1100-1101*** *dated* ***27.03.2018*** *to the Directorate of Education regarding Domicile Certificate and Income Certificate in respect of Mr.Gaurav Goyal. The copy of said report is hereby* ***Annexure as "G"***
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> *10. It is submitted that after receiving of report from the relevant branches regarding not finding/traceable of application and relevant documents of Domicile and Income Certificates and on the basis of*

> *spot visit verification report conducted by MS.AnkitaAnand,IAS,SDM (ChanakyaPuri]. On 07.05.2018 Sh. AshishShokeen, Executive Magistrate has cancelled the Domicile and Income Certificates of Mr.Gaurav. The copy of order dated 07.05.2018 is hereby* ***Annexure as "H".***
> *11. It is submitted that the application and relevant documents filed by the petitioner for issuing the Domicile and Income Certificate could not be found/ Traceable after taking all the necessary steps."*

32. Learned counsel appearing on behalf of respondent no.2-School states that the petitioner had fraudulently secured the admission under EWS category through false disclosure of the income by his father and thus, the admission of the petitioner has been rightfully cancelled from the School. He submits that since the income certificate of the petitioner's father, for the years spent by the petitioner in the school, does not correspond to the adequate eligibility for availing the benefits of EWS category, the admission of the petitioner is liable to be cancelled on this sole ground only.

33. He further contends that the petitioner has fraudulently received the education at the expense of a deserving candidate and has time and again agitated procedural grounds with an objective of prolonging the matter. According to him, by virtue of accepting the income mentioned in the impugned order dated 09.02.2021 as correct, the fraud has already been admitted by the petitioner *vide* order dated 13.09.2022 passed by this court. It is, therefore, submitted by the learned counsel that the impugned order must be upheld to prevent the evasion of fraud and misuse of the judicial process.

34. Learned counsel for respondent no.2-School further submits that the impugned order does not suffer from any factual or legal infirmity as the income of the petitioner's father alone, as per the relevant ITRs handed over across the board on 13.09.2022, was well

above the threshold amount of Rs.1,00,000/- from all sources, rendering the petitioner ineligible for admission in EWS category. He states that since the petitioner has candidly accepted the actual income in the aforesaid order, the facts and situation in the instant case are distinguishable from the facts of the previous writ petitions filed by the petitioner, where the wrongdoing on the part of the petitioner was never admitted. It is, thus, contended by respondents that they had the requisite and cogent material which reckoned that the petitioner forged the quintessential documents and engaged in egregious fraud to secure the admission in respondent no.2-School.

35. Learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the cases of ***Mohd. Sartaj & Ors. v. State of U.P & Ors.***[3] and ***State of U.P. v. Sudhir Kumar Singh & Ors.***[4]**,** to submit that when the facts are admitted or undisputed then, the court may not issue its writ to compel the observance of natural justice when it is futile and the said principle may only be applicable where the real prejudice is caused to the parties. It is, therefore, the case of the respondents that since the primary contention of the controversy at hand, i.e., the actual income of the petitioner's father, is squarely admitted by the petitioner, there is no question of prejudice involved in the case which would warrant the petitioner to invoke the principles of natural justice to mitigate his grievance.

36. He further submits that even if it is presumed that the principles of natural justice are applicable in the facts and circumstances of the present case, the series of personal hearings granted to the father of the petitioner to present his case before passing of the impugned order

[3] (2006) 2 SCC 315
[4] 2020 SCC OnLine 847

would show that the petitioner has not been deprived of any effective hearing. With regard to the question of the competent authority to pass the impugned order, he submits that the Government departments undergo departmental rotation very commonly and if the hearing had to be restarted each time the shuffling of officers takes place, no decision would be arrived at.

37. Learned counsel, while contending that no prejudice is caused by the issuance of the order by a different officer from the one who held the initial meetings, has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Ossein and Gelatine Manufacturers' Association of India v. Modi Alkalies and Chemicals Ltd. & Anr.***[5] and a decision passed by this court in W.P. 3642 of 2020 titled as ***Rhonpal Biotech Pvt. Ltd. v. New Delhi Municipal Council & Ors.*** to buttress his submissions.

38. Learned counsel for respondent no.2-School, while referring to Para C (ii) of the impugned order passed by respondent no.1-DOE, indicates that when the verification of the documents was conducted, it was confirmed that the petitioner's father had two PAN cards. Since the ITRs only pertain to one PAN card, in all probability, the actual income would not have been ascertained. As per respondents, it is highly implausible and far-fetched to assume that the income of the petitioner's father had increased six times in the period of around three months, i.e., in the interregnum period when the income certificate was issued and the ITR was filed.

39. He further submits that the order dated 18.04.2018, issued by the District Magistrate, New Delhi District to the DCP, New Delhi

[5] (1989) 4 SCC 264

District, declared the income certificate as null and void. The said order also states that the admission of the petitioner was based on gross misrepresentation of material facts. It is contended by the respondents that since the said order was never challenged by the petitioner, it has attained finality and it only bolsters the well-reasoned order passed by respondent no.1-DOE. He also submits that the plethora of certificates relied upon by the petitioner only attest the genuineness of the income certificate and since the income certificate itself is found to have been obtained fraudulently, none of the said certificates would advance the case of the petitioner.

40. According to him, the order of annulment of the domicile certificate has also not been challenged by the petitioner till date and in any case, the central dispute in the present case is the income certificate which has been illicitly used to obtain admission and therefore, all other documents are ancillary to the same.

41. I have heard the submissions made by learned counsel appearing on behalf of the parties and perused the record.

ISSUES

42. The questions which fall for consideration are delineated forthwith as:

I. Whether the petitioner obtained admission under EWS category in a mala fide manner and by engaging in egregious fraud or misrepresentation?

II. Whether the scope of Article 226 of the Constitution of India, being equitable and discretionary, warrants invocation in favour of the petitioner in the given facts and circumstances?

III. Whether the petitioner was afforded an effective hearing in congruity with the principles of natural justice, particularly the rule of *audi alteram partem?*

ANALYSIS

43. Before adverting to the above-framed issues for adjudication of the instant case, it is significant to trace the brief journey which led to the passage of 2011 Order. In the year 1993, the decision of the Hon'ble Supreme Court in the case of ***Unnikrishnan JP v. State of Andhra Pradesh & Ors.***[6]**,** recognized the Right to Education as a fundamental right flowing from Article 21 of the Constitution of India.

44. However, it was the 86th Constitutional Amendment brought in the year 2002, which led to the insertion of Article 21-A in the Constitution of India and paved the way for recognition of Right to Education as a fundamental right for the children between the age of 6 to 14 years. Pursuant to the said amendment, Right of Children to Free and Compulsory Education Act *(hereinafter as 'RTE Act')* was passed in 2009, which came into effect on 1st April, 2010.

45. The RTE Act was enacted to realize the goal of free and compulsory education to all children of the age of six to fourteen years envisaged under Article 21-A of the Constitution of India. The Statement of Objects and Reasons of the RTE Bill, 2008 reads as under:

> *"The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years.*

[6] 1993 SCC (1) 645

Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,—

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;
(b) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;
(c) 'free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;
(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and
(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in article 21-A of the Constitution.

6. The Bill seeks to achieve this objective."

46. Section 2(n) of the RTE Act defines 'school' as:

> *"(n) "school" means any recognised school imparting elementary education and includes—*
>
> > *(i) a school established, owned or controlled by the appropriate Government or a local authority;*
> > *(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;*
> > *(iii) a school belonging to specified category; and*
> > *(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;"*

47. Section 12 of the RTE Act deals with the extent of school's responsibility for free and compulsory education including reservation of twenty-five percent seats for economically disadvantaged class, which reads as under:

> ***"12. Extent of school's responsibility for free and compulsory education.—***
>
> *(1) For the purposes of this Act, a school,—*
>
> *(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;*
>
> *(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;*
>
> *(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:*
>
> *Provided that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.*

> *(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:*
>
> *Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:*
>
> *Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.*
>
> *(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be."*

48. The legislative wisdom expressed in the RTE Act finds its source in the constitutional promise of equal opportunity for one and all. An expansive definition of "school" coupled with an unconditional promise of free and compulsory education indicate the pragmatic approach of the legislature. The RTE Act aims to create an equalizing effect so far as access to education is concerned, unaffected by the differences or barriers born out of economic weakness.

49. Further, Section 38 of the RTE Act equips the appropriate government to make rules for carrying out the provisions of the RTE Act. The Government of NCT of Delhi, which is the appropriate government in the present case, passed the 2011 Order to implement the provisions of the RTE Act.

50. The main thrust of the petitioner in the instant case is that he has not been afforded a requisite opportunity of fair hearing by the respondents and thus, in view of the miscarriage of natural justice, the impugned order dated 09.02.2021 is *non-est* in the eyes of law as the

hearing was merely an empty formality. According to him, a sufficient opportunity was never provided to him to effectively present his case and the hearings in which he was called upon, were ostensibly artificial attempts in the teeth of due process of law. However, before moving towards examining the aforesaid contention, it is pertinent to delve into the intricate factual matrix of the case to determine the existence of mala fide on the part of the petitioner and whether invocation of the equitable jurisdiction under Article 226 of the Constitution of India is warranted.

Issue I

51. It has been argued by learned counsel for the respondents that the petitioner had obtained the admission in a clandestine manner through submission of fake documents including the income certificate, the genuineness of which is of paramount importance in securing the admission under EWS category. The impugned order dated 09.02.2021 passed by respondent no.1-DOE, which according to the respondents establish a clear case of an egregious fraud on the part of the petitioner's father, is culled out as follows:

> *"23. On the basis of material on record and going through the reply dated 27.03.2019, it is concluded that:*
> *I. Sh. Gaurav Goyal has secured admission of his child Master Singham under EWS category in academic session 2013-14 on the basis of documents obtained on false premises by mis-representing and concealing his actual total income and deliberately giving false declarations of residential address, wrong/fake birth certificate and hence he has not only committed a fraud but also encroached the fundamental right of a deserving child for the seat reserved under EWS/DG Category for the academic session 2013-14 in Sanskriti School, Chankya puri, New Delhi.*
> *II. That the present case is one of a fraud, perpetrated by Mr. Gaurav Goyal, whereby a seat which could otherwise have gone to a deserving EWS student, was effectively high jacked by him for his ward Master Singham.*

III. That infact, the income certificate and date of birth certificate and tendered by Mr. Gaurav Goyal at the time of securing admission for his ward master Singham under EWS Category in year 2013 has all been subsequently cancelled by the concerned government agencies.

IV. That the cancellation of the admission of the student is only an inevitable sequitur to the unearthing of the fraud and this kind of practice must be dealt with strictly, otherwise, it would embolden others, who are of similar bent of mind and would completely negate the very intent and purpose of providing for a preferential right, to education, for students belonging to the Economically Weaker Section of the society.

V. Suffice to state that Mr. Gaurav Goyal on false premises by misrepresenting and concealing his actual total income and deliberately giving false declaration of residential address, birth certificate, as a result whereof he had not only committed a fraud but also prevented another economically deprived child from getting admission in the said school. That if such admission is not cancelled and treating the child as having been admitted under the general category instead of EVS category, would provide a carte blanche to unscrupulous parents, to obtain admissions, for their wards, under the EWS category and, on the fraud being detected, claim that the admission be retained, but under the General category."

52. The Constitution of India prescribes special measures for various categories of persons. Originally, we recognized reservations for socially and educationally backward classes of the society. However, after the promulgation of 103rd amendment, the Constitution created space for reservation on purely economic basis. The core of EWS reservation policy lies in the quantum of income. Therefore, there could be no denying of the fact that besides all other documents, if the income certificate submitted by the petitioner's father at the time of admission is itself not acceptable as per law, the necessary sequitur is the cancellation of the concerned child's admission. The said income certificate of the father of the petitioner dated 08.01.2013 reads as under:

"OFFICE OF THE DEPUTY COMMISSIONER (NEW DELHI DISTRICT), DELHI

S.No. 7/23/2418/12/12/2012/0321012860/108

Dated 08.01.2013

INCOME CERTIFICATE

On the basis of the affidavit filed / documents produced by Shri Gaurav s/o d/o w/o Sh. Avneet r/o A-154, Block S-117, Sanjay Camp, Chanakya Puri, New Delhi before the undersigned and in view of the verification and enquiry report furnished by the bailiff/ field staff, etc the income from all sources of Sh. / Ms. Gaurav assessed to be at Rs. 67,200/- (Sixty Thousand and Two Hundred Only) per annum.

Certificate is issued for the purpose of for school admission.

Certificate valid for the period of one year from the date of issue."

53. The contents of the income certificate exhibit that the income of father of the petitioner was assessed to be Rs. 67,200/- per annum at the time of admission.

54. However, it is seen that the petitioner's father has himself admitted before this court that his income for the said year and subsequent year was exceedingly above the threshold required for seeking admission in EWS category. The order of this court dated 13.09.2022, whereby the petitioner's father has admittedly accepted his income to be well above the threshold income required for admission in the EWS category, reads as under:

"1. Pursuant to order dated 07th September, 2022, Mr. Rajesh Yadav, Senior Counsel for Petitioner, on instructions, states that figures mentioned in paragraph 22 of impugned order dated 09th February, 2021 pertaining to Petitioner's income, are correct. Copies of income tax returns for assessment years 2010-11, 2013-14, 2014-15 and 2015-16 handed over across the board by Mr. Vaibhav Sethi, counsel assisting Mr. Yadav, are taken on record. On a query of the Court, it has been informed that no income tax return was filed for assessment years 2011-12 and 2012-13 on account of nil income. The said statement is also taken on record.

2. It is directed that Petitioner shall remain present in Court on the next date of hearing.

3. List on 12th October, 2022".

55. It is apposite to extract the relevant portion of paragraph no.22 of the impugned order dated 09.02.2021, which reads as under:

B. During admission of his first child in EWS category, Sh. Gaurav Goyal submitted an Income Certificate dated 08.01.2013 issued by the Tehsildar, Chanakya Puri, New Delhi claiming to be a EWS category applicant with a total annual income only Rs. 67,200/- from all sources. Whereas, in the Income Tax Return filed by Sh. Gaurav Goyal (PAN No. AOTPG9631E) for the Assessment Year 2013-14 (Financial Year 2012-13) Sh. Gaurav Goyal has declared his total income as Rs. 4,23,850/- out of which he has paid income tax of Rs. 28,530/- and got refund of Rs. 1,890/-. This indicates that he had obtained the Income Certificate based on false declaration and in a fraudulent manner. Further, from the Income Tax record, it has come out that Sh. Gaurav Goyal has filed following Income Tax Returns:

Financial Year	*Assessment Year*	*Amount Declared*	*Tax Paid*	*Refund*
2009-10	*2010-11*	*1,46,550/-*	*--*	*--*
2012-13	*2013-14*	*4,23,850/-*	*28,530/-*	*1890/-*
2013-14	*2014-15*	*9,14,260/-*	*1,31,596/-*	*12,230/-*
2014-15	*2015-16*	*7,35,000/-*	*75,250/-*	*650/-*

56. The factual matrix of the present case suggests that the income certificate, as submitted by the petitioner's father and which was *sine qua non* for securing admission in the desired category of petitioner, was cancelled by an order of the competent authority. It is also a *fait accompli* that the cancellation of the said certificate remains unchallenged till date and thus, it has attained finality. In the case of ***Central Bank of India v. Madhulika Guruprasad Dahir***[7]**,** where an employee was appointed on the basis of false caste certificate, which was later cancelled by the Scrutiny Committee, the court was of the

[7] (2008) 13 SCC 170

opinion that since the said order was not challenged in the writ petition, it had attained finality. The relevant paragraph reads as under:

> *"11. The sequence and the narration of facts above leaves little doubt in our mind that the caste certificate, on the basis whereof the employee got employment, was false to her knowledge. Based on that the Scrutiny Committee, on reconsideration after remand by the High Court, vide order dated 29-5-2003, again invalidated the employee's caste certificate, resulting in termination of the services by order dated 28-6-2003. As noted above, the said order of the Scrutiny Committee having not been challenged, has attained finality and remains in operation. It is, thus, not a case of mere rejection of a claim and the cited authorities are inapplicable."*

57. Therefore, the only legitimate document which could have been the basis for obtaining the income certificate as well, is the ITR filed by the petitioner's father. If the declared income of the petitioner's father is perused from the aforementioned table, which stands admitted on the judicial record, it becomes certain that the actual income was exceptionally above the threshold as per Clause 2(c) of the 2011 Order.

58. As per the mandate of the proviso to Clause 6 of the 2011 Order, a child belonging to a weaker section shall submit a self-declaration of annual income on affidavit every year for continuation of free seat in the school once admitted against free seat. A bare perusal of the aforementioned table indicates that the income of the petitioner's father alone, for the subsequent years, was consistently above the required threshold and thus, the petitioner was disentitled from claiming any right on the seats reserved for the EWS category. Also, the stand taken by the petitioner's father that the skyrocketing increase in his income had occurred during the interregnum period of the issuance of the income certificate and the filing of the ITR (a three months' period at best), is *prima facie* an eyewash which seems distant from reality.

59. In light of the aforementioned facts and the judicial admission made by the petitioner's father, it is discernible that the petitioner had obtained admission on the basis of misrepresentation of his father's income which is much higher than the requisite income for claiming the benefits of the EWS reservation. The efforts employed by the petitioner reek of various circumventions to fraudulently gain a seat in respondent no.2-School and therefore, the wrongdoings on the part of the petitioner's father are clearly established in the instant case. It is also seen that an FIR is already pending against the petitioner's father and hence, the law would take its own course in fact finding and adjudicating such aspects for enforcing legal implications.

60. Furthermore, the facts of the present case are clearly distinguishable from the factual situation in earlier two petitions preferred by the petitioner, which were allowed by this court. In the previous cases, neither the show cause notices were appropriately served nor any effective hearing could be said to have been granted to the petitioner. Also, there was no admission of the said ITRs which stand admitted during judicial proceedings in the present case. Thus, the present situation is seemingly incomparable with the previous writ petitions.

61. It could be safely concluded that though the certificates of income, domicile and birth were initially issued by the Government authorities, however, they were obtained based on the misrepresentation of facts by the petitioner's father. The entire case revolved around the income of the petitioner's father and since, the factum of income itself was premised on a false factual foundation, the fraudulent act with respect to domicile and birth certificate does not

require any deliberation. In fact, a bare glance at the table pertaining to ITRs submitted by father of the petitioner would indicate a concerted and pre-planned effort to gain admission for the petitioner. He appears to have astutely planned to evade filing of ITRs for the preceding years i.e., financial year 2010-11 and 2011-12 to avoid any hindrance in securing the admission. Thus, the first issue stands answered in the affirmative to the effect that the petitioner's admission was secured in a mala fide manner and by playing a fraud upon the institutions.

Issue II

62. The next issue which arises for consideration is whether, in view of the aforesaid facts and circumstances, this court should invoke its equitable jurisdiction under Article 226 of the Constitution of India for deciding upon the relief prayed for in the instant petition.

63. The nature and scope of jurisdiction exercisable under Article 226 of the Constitution of India has been a subject matter of discussion in various judicial pronouncements. It is significant to advert to a series of judgments to appreciate the scope of extraordinary jurisdiction under Article 226.

64. The decision of the Hon'ble Supreme Court in the case of ***Dwarkanath v. Income-Tax Officer, Special Circle, Kanpur***[8] succinctly encapsulates the constitutional wisdom behind the incorporation of Article 226 of the Constitution of India, which reads as under:

> *"4. We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads:*

[8] AIR 1966 SC 81

> *"...every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."*

> *This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in Basappa v. Nagappa [(1962) 2 SCR 169] and Irani v. State of Madras [(1955) 1 SCR 250]."*

65. It is strikingly settled that any party approaching the court of law must come with clean hands and refrain from any material suppression of facts as it would pollute the sanctity of judicial proceedings. In the case of ***K.D. Sharma v. Steel Authority of India Limited***[9]**,** the Hon'ble Supreme Court has held as under:

> *"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are*

[9] (2008) 12 SCC 481

issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim."

66. The Hon'ble Supreme Court in the case of ***Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of Uttar Pradesh***[10]**,** reiterated the importance of fairness in an equitable proceeding as under:

"16. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In Advocate General, State of Bihar v. M.P. Khair Industries this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt."

67. In the case of ***Manhohar Lal v. Ugrasen***[11]**,** the Hon'ble Supreme Court, while taking a similar view, held that it is law of nature that one should not be enriched by loss or injury to another. The relevant paragraph no. 48 of the said decision reads as:

"48. The present appellants had also not disclosed that land allotted to them falls in commercial area. When a person approaches a court of equity in exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution, he should approach the court not only with clean hands but also with clean mind, clean heart and clean objective. "Equally, the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice." Who seeks equity must do equity. The legal maxim "Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem", means that it is a law of nature that one should not be enriched by the loss or injury to another. (Vide Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852] , K.R. Srinivas v. R.M. Premchand [(1994) 6 SCC 620] and Noorduddin v. Dr. K.L. Anand [(1995) 1 SCC 242] at SCC p. 249, para 9.)"

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[10] (2008) 1 SCC 560
[11] (2010) 11 SCC 557

68. In the case of ***Ramniklal N. Bhutta v. State of Maharashtra***[12]**,** the Hon'ble Supreme Court was of the view that while exercising the power under Article 226 of the Constitution of India, the courts shall strike a balance between public interest and private interest. The paragraph no.10 of the said decision reads as under:

> *"10…The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 — indeed any of their discretionary powers."*

69. The Hon'ble Supreme Court, while extensively discussing upon the equitable nature of writ jurisdiction under Article 226 of the Constitution of India in the case of ***V. Chandrasekaran v. Administrative Officer***[13]**,** has held as under:

> *"44. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a court of equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem, means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852] , Noorduddin v. K.L. Anand [(1995) 1 SCC 242] and Ramniklal N. Bhutta v. State of Maharashtra [(1997) 1 SCC 134 : AIR 1997 SC 1236] .)*
>
> *45. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit*

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[12] (1997) 1 SCC 134
[13] (2012) 12 SCC 133

> *containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.*
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> *46. In Dalip Singh v. State of U.P. [(2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324] this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final".*

70. The aforementioned judicial pronouncements duly indicate that the remedy under Article 226 is plenary in nature and is intended to meet injustices prevalent in various forms. It is meant to ensure that the constitutional courts, being the protectors of sacred fundamental rights, are equipped with sufficient means to achieve their ends. However, wide powers must be circumscribed by adequate safeguards, and rightly so. It is vividly seen from the aforementioned judicial pronouncements that a litigant seeking relief under Article 226 must approach the court with clean hands, without suppression of any material facts therein. Equity must be sought only with pious intentions and any attempt to deviate from the said position must be dealt with sternly to prevent any abuse of the process of law. It is explicit that no relief can be provided to a party who approaches the court in bad faith to take advantage of equitable powers. Afterall, the stream of justice must not be polluted under any circumstance.

71. Although the requirement of being fair to the court is equally essential at all judicial forums, it assumes a greater importance before the constitutional courts. For, in a writ jurisdiction, the High Court does not have the benefit of examining or cross-examining the parties orally and more often than not, reliance is placed upon the sworn

affidavits. In such a scenario, the importance of approaching the court with clean hands becomes paramount and any attempt to circumvent the said requirement shall amount to a fraud with the constitutional remedies.

72. In the present case, the petitioner's father has admitted his income to be exceedingly above the required threshold for the concerned year, only during the course of proceedings in the Court. Even otherwise, he was required to maintain the said threshold throughout the period of study of the petitioner in EWS category in respondent no.2-School. Since his income for the subsequent years is also much higher than the requisite income, he ought to have immediately moved an application for altering the category of petitioner or taken any other appropriate recourse which could have established the *bonafide* of the petitioner or his father. Rather, the petitioner continued uninterrupted study for subsequent years, thereby depriving a deserving child who could have secured admission in lieu of the petitioner.

73. Interestingly, the cancellation of the income and domicile certificates by the competent authorities remains unchallenged by the petitioner till date. The sole endeavour of the petitioner has been to contest the present matter by aggravating the technicalities to the status of substantial failure of justice. But, no more.

74. It is, therefore, seen that the petitioner has tried to resort to the equitable jurisdiction of this court with tainted hands and therefore, the petition is liable to be straightforwardly rejected at this juncture only. However, taking into consideration that it is the third round of litigation preferred by the petitioner, this court deems it proper to

delve into the merits of the case to satisfy its conscience and to meet the ends of justice.

Issue III

75. The principles of natural justice, with the passage of time and dynamism of law, have succinctly converged to meet two primary tests – *nemo in propria causa judex, esse debet* and *audi alteram partem* i.e., the rule against bias and the right of fair hearing, respectively**.**

76. The principles of natural justice are intended to infuse life into the promise of equal opportunity in the eyes of law and thus, could be said to be tacitly entrenched in the Constitution of India, including the Preamble. However, the practical application of these principles is not done in a mechanical or absolute manner. In fact, concept of natural justice was termed as an unruly horse, possibly to signify the dangers associated with mechanical application of the same. However, in the case of ***Enderby Town Football Club Ltd. v. Football Assn. Ltd.***[14]**,** Lord Denning observed that with a good man in the saddle, the unruly horse can be kept under control; it can jump over obstacles, it can leap fences put up by fictions and come down on the other side of justice. In ***Jain Exports (P) Ltd. v. Union of India***[15]**,** the Hon'ble Supreme Court said that the observance of the natural justice has no relevance with the fatness of the stake, but is essentially related to the demands of a given situation. The principles, therefore, assume different shape and substance in different factual scenarios.

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[14] (1970) 3 WLR 1021 (CA)
[15] (1988) 3 SCC 579

77. One of the earliest pronouncements on this point was delivered by Tucker, L.J. in ***Russel v. Duke of Norfolk***[16] wherein it was observed thus:

> *"There are, in my view, no words which are of universal application to every kind of inquiry and 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. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."*

78. The above pronouncement was adopted by the Hon'ble Supreme Court of India with approval in ***Suresh Koshy George v. University of Kerala***[17] wherein it held that *"the rules of natural justice are not embodied rules"* and later in ***State of Kerala v. K.T. Shaduli Grocery Dealer***[18] wherein it held that *"the rules of natural justice are not a constant: they are not absolute and rigid rules having universal application*. A subsequent reiteration of the same principle could be traced in ***Karnataka SRTC v. S.G. Kotturappa***[19], Hon'ble Supreme Court laid down the position of law as:

> *"24. …The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality…"*

79. The judicial pronouncements on the concept of natural justice have invariably adopted the view that the principles associated with this concept are not meant for a universal application. In ascertaining

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[16] (1949) 1 All ER 109
[17] AIR 1969 SC 198
[18] (1977) 2 SCC 777
[19] (2005) 3 SCC 409

the standards of natural justice on a case to case basis, the court must be mindful of the nature of decision (legislative, quasi-judicial, judicial etc.), the relationship between the parties, enacted rules (if any) etc. The ultimate test is of reasonableness, fairness and non-arbitrariness in decision making. The words used by the Hon'ble Supreme Court in ***Maneka Gandhi v. Union of India***[20], to the effect that the procedure must be just, fair and reasonable and not fanciful, oppressive or arbitrary, still capture the rule of law with precision.

80. In the instant case, since the adherence to the principle of *audi alteram partem* is in question, the contentions raised by the petitioner have to be tested on the anvil of the rule of law governing the said principle. It is settled jurisprudence that the issuance of notice is the foremost step in moving the wheels of natural justice. In the case of ***Gorkha Security Services v. Govt. (NCT of Delhi)***[21]**,** the Hon'ble Supreme Court laid down the essentials of an adequate notice for accomplishing the requirement of principles of natural justice. Paragraph no.22 of the said decision reads as under:

> *"22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed.* ***To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:***
>
> ***(i) The material/grounds to be stated which according to the department necessitates an action;***
>
> ***(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.***

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[20] 1978 AIR 597
[21] (2014) 9 SCC 105

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

[Emphasis supplied]

79. In light of the aforementioned position of law, it would be appropriate to first ascertain the validity of the show cause notice issued to the petitioner. The factual scenario herein indicates that a show cause notice was issued on 24.01.2019, calling upon the father of the petitioner to explain as to why the admission of the petitioner should not be cancelled. The show cause notice dated 24.01.2019 reads as under:

"SHOW CAUSE NOTICE

Whereas, Sh. Gaurav Goyal, had secured admission for his ward namely Master Singham in Sanskriti School, Chankyapuri under the Economical Weaker Section ("EWS") category, in the academic year 2013-14, in Nursery class.

Whereas, Sh. Goyal had submitted along with the application, certain documents including, a birth certificate dated 5.1.2013 bearing registration no. MCDOLIR-0113-005476247 pertaining to Master Singham, an income certificate number Income/7/73/2418/12/12/2012/9321012860/108 dated: 08/01/2013 showing a total Income of Rs. 67200/- from all sources, a domicile certificate dated 18.12.2012 showing his residential address to be A/154, Block S-117, Sanjay Camp, Chanakyapuri, New Delhi etc.

Whereas, on 3.1.2018, Sh. Gaurav Goyal submitted a request to the Principal, Sanskriti School requesting for change in category of Master Singham's admission from EWS/DG category to General.

Whereas, during the course of processing and examination of the aforesaid request made by Sh. Goyal, certain doubts have arisen with regard to the veracity and genuineness of the claim set up by Sh Goyal that he and his family belonged to the EWS category during the period 2013-14 which formed the basis of grant of admission to Master Singham in Sanskriti School. It appears that,

1. The annual income of Sh. Gaurav Goyal, was beyond 1 lakh rupees during year 2012-13 and for the subsequent assessment years as well.

II. The date of birth certificate no. MCDOLIR- 0113-005476247 is not a genuine document.

III. The claim of Sh. Goyal of having been a resident of A/154, Block S-117, Sanjay Camp, Chanakyapuri, New Delhi at the relevant time is false.

Whereas, the purpose and objective of providing a reserved quota of atleast 25% of seats, for the economically weaker sections of society, as enshrined in Section 12 (1)(c) of the Right of Children to Free and Compulsory Education Act, 2009, is to ensure that children belonging the financially weaker sections of society or those suffering from the defined disadvantages are provided free and compulsory education.

Whereas, it prima facie appears that the admission of Master Singham in Sanskriti School was Stained by suppression fabrication and falsification of vital material facts and documents. It further appears that an egregious fraud has been perpetrated by Sh. Goyal which has resulted in the unfortunate and unjust denial of admission under the EWS category to a deserving genuine candidate. Whereas, if this be the position, the admission granted to Master Singham in Sanskriti School is liable to be cancelled.

Now, therefore, in exercise of the power vested under Section 3 of the Delhi School Education Act, 1973, Rule 26 of the Delhi Right of Children to Free and Compulsory Education Rules, 2011 read with Clause 10 of the Notification no. 15(172)/DE/Act/2010/69 dated 07.01.2011 and the judgment dated 7.1.2019 passed by the Hon'ble High Court of Delhi In W.P. (C) No. 8791/2018, before proceeding further in the matter, it is deemed appropriate to afford Sh. Gaurav Goyal father of Master Singham, a personal hearing on 04.02.2019 at 2:00 PM in the chamber of Director of Education at Room Number 12, Directorate of Education, Old Secretariar, Delhi-110054 to show just cause as to why the admission of Master Singham in Sanskriti School, Chanakyapuri, New Delhi be not cancelled.

This issues with the approval of Competent Authority".

80. If the contents of the aforesaid notice are perused, it is discernible that the action of cancellation of the petitioner's admission was necessitated on several grounds, *inter alia* due to the submission of fallacious documents by the father of the petitioner at the relevant time for securing admission of the petitioner in respondent no.2-School. The said notice unequivocally lays down the grounds which necessitate the action as well as the proposed penalty i.e., the

cancellation of the admission of the petitioner. It is, therefore, apparent that the said show cause notice does not foreclose the matter, rather, it lucidly contains requisite information to satisfy the two-pronged approach devised for determination of an adequate notice, as envisaged in ***Gorkha Security (supra)*** case.

81. Undeniably, the petitioner was granted sufficient time to respond to the said notice. In view of the said notice, on 04.02.2019, a personal hearing in the form of a meeting was also scheduled by respondent no.1-DOE. At the time of hearing, the father of the petitioner sought two weeks' time to file the reply, which was granted by respondent no.1-DOE.

82. In order to ensure that no person is condemned unheard, the next significant limb is conceptualized in the form of right to be known about the evidence used against him/her during the course of proceedings. It enjoins the administrative authority exercising adjudicatory powers, respondent no.1-DOE herein, to reasonably disclose the evidence used against the subject during the course of proceedings. This principle of fair hearing has been firmly conceptualized by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal***[22], wherein, in terms of Paragraph no.9, it was held as under:

> ***"9. In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and, lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that***

[22] AIR 1955 SC 65

> ***the assessee had not had a fair hearing.****The estimate of the gross rate of profit on sales, both by the Income Tax Officer and the Tribunal seems to be based on surmises, suspicions and conjectures. It is somewhat surprising that the Tribunal took from the representative of the department a statement of gross profit rates of other cotton mills without showing that statement to the assessee and without giving him an opportunity to show that statement had no relevancy whatsoever to the case of the mill in question. It is not known whether the mills which had disclosed these rates were situate in Bengal or elsewhere, and whether these mills were similarly situated and circumstanced. Not only did the Tribunal not show the information given by the representative of the department to the appellant, but it refused even to look at the trunk load of books and papers which Mr Banerjee produced before the Accountant-Member in his chamber. No harm would have been done if after notice to the department the trunk had been opened and some time devoted to see what it contained. The assessment in this case and in the connected appeal, we are told, was above the figure of Rs 55 lakhs and it was meet and proper when dealing with a matter of this magnitude not to employ unnecessary haste and show impatience, particularly when it was known to the department that the books of the assessee were in the custody of the Sub-Divisional Officer, Narayanganj. We think that both the Income Tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It is thus a fit case for the exercise of our power under Article 136."*
>
> *[Emphasis supplied]*

83. It is to be noted that, on the following date of hearing, i.e., 26.02.2019, the father of the petitioner filed the reply and asked for all the documents relied upon by respondent no.1-DOE pertaining to the show cause notice. During the course of hearing, he was also asked to provide a clear list of documents so that the same could be considered and 3 days-time, as prayed for, was granted to the father of the petitioner for giving the list of documents. Also, further 12 days' time was provided for filing additional reply, if any.

84. Subsequently, on 02.03.2019, the father of the petitioner made a request to provide the details of complete verification that has been carried out along with all the supporting documents and reports of the competent authority. A list of documents was also attached in this

regard. In response to the same, respondent no.1-DOE, *vide* letter dated 11.03.2019, provided the said documents, as requested by him. It is, therefore, visibly clear that without jeopardizing the interest of the petitioner, the documents relied upon by respondent no.1-DOE were duly supplied to the father of the petitioner following the tenets of natural justice.

85. The fair-disclosure requirement is deeply embedded in our constitutional scheme. The underlying purpose of such disclosure is to enable the subject of a proceeding to respond meaningfully to the evidence against him/her. In this case, it could be said that the petitioner was not deprived of the material in any manner.

86. Now, it is appropriate to advert to the third foundational limb of the superstructure of *audi alteram partem*, which requires that the adjudicatory authority must afford a reasonable opportunity to the aggrieved party to present its case, either in writing or orally, at the discretion of adjudicatory authority in normal course. On this point, the settled position of law is clear that oral hearing is not an integral part of fair hearing, unless it is required to be conducted for meeting the ends of justice in the given circumstances of the case where a person is incapable of putting up an effective defence.

87. A Constitution Bench of the Hon'ble Supreme Court, in the case of ***Union of India v. Jyoti Prakash Mitter***[23]**,** took a view that when an opportunity has been provided to a person to present his case in writing, there is no violation of principles of natural justice if an oral hearing is not given. Paragraph no.26 of the said decision is culled out as follows:

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[23] (1971) 1 SCC 396

> *"26. Article 217(3) does not guarantee a right of personal hearing. In a proceeding of a judicial nature, the basic rules of natural justice must be followed. The respondent was on that account entitled to make a representation. But it is not necessarily an incident of the Rules of natural justice that personal hearing must be given to a party likely to be affected by the order.* ***Except in proceedings in Courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He however cannot claim that an order made without affording him an opportunity of a personal hearing is invalid.****The President is performing a judicial function when he determines a dispute as to the age of a Judge, but he is not constituted by the Constitution or a court. Whether in a given case the President should give a personal hearing is for him to decide. The question is left to the discretion of the President to decide whether an oral hearing should be given to the Judge concerned. The record amply supports the view that the President did not deem it necessary to give an oral hearing. There were no complicated questions to be decided by the President. On the one hand there was the evidence of the matriculation certificate and the representation made by the respondent before the Board of Commissioners in the United Kingdom when the respondent submitted himself for being admitted to the Indian Civil Service Examination. On the other hand there was the evidence of the assertion made by the respondent that he was born on December 27, 1904, which was sought to be supported by the almanac with an entry in the margin, a horoscope, an affidavit of Panchkari Banerjee, Secretary to the then Chief Justice Sir Arthur Trevor Harries, in which it was stated that the question about the age of the respondent was discussed with the Chief Justice. The truth of the statements made by the respondent had to be judged in the light of his conduct, that he gave no evidence of the date of his birth when he was appointed permanent Judge of the High Court, nor when in 1960 opportunity was given to him to furnish any material in support of his contention regarding his age. If upon this evidence the President was of the view that the disputed question may be decided without giving an opportunity of personal hearing, this Court cannot set aside the order on the ground that the order was made without following the Rules of natural justice."*
>
> *[Emphasis supplied]*

88. Be that as it may, the facts of the present case exhibit that an opportunity of hearing, both in oral as well as in writing, was provided to the father of the petitioner. On the following date of hearing which was scheduled on 25.03.2019, he was asked to conclude all his

submissions within a period of one week. Thereafter, an interim reply dated 25.03.2019 was filed by him, which stated that *firstly*, the show cause notice was in the nature of determination of guilt, *secondly*, present proceedings were illegal and *non-est* in the eyes of law as the office of the Director of respondent no.1-DOE, who was hearing the case, lacked jurisdiction and *lastly*, disputed questions of facts were involved which required trial.

89. Therefore, the submission made by the learned counsel for the petitioner that the petitioner's father was not provided an effective hearing does not hold any water in the facts and circumstances of the case at hand. Contrarily, it is evident that a requisite opportunity to effectively present his case before the adjudicatory administrative authority was granted to him, in tandem with the letter and spirit of law governing the principles of natural justice. The outcome of the hearings may not be desirable for the petitioner, however, that does not imply that he was restrained from presenting his case at all.

90. It is discernible from *Annexure-P22* and *Annexure-P24* that the father of the petitioner also counter-signed the minutes of the meeting and thereafter, respondent no.1-DOE, after duly considering the submissions, passed a detailed order on 09.02.2021, cancelling the admission of the petitioner. This order was aptly communicated to the petitioner by respondent no.2-School *vide* letter dated 15.02.2021. Therefore, it cannot be said that the impugned order has caused any real prejudice to the petitioner on the ground of non-effective hearing provided by respondent no.1-DOE. In fact, the said impugned order does not seem to suffer from any legal infirmity as it was passed after due consideration of the principles of natural justice and the ancillary

facets of legal jurisprudence involved therein, with full force and rigour.

91. Before proceeding to the next facet of natural justice, it is apposite to note that in a judicial review of administrative action on the ground of natural justice, the courts essentially review the procedure adopted for arriving at a decision and not the decision itself. The petitioner may not have found the outcome of cancellation of admission as a desirable one, however, the court cannot hold it unconstitutional on the sole premise of undesirability, as long as the outcome was a result of a fair and reasonable procedure which provided sufficient opportunity to the petitioner to participate in the process. It may be noted that in a participatory constitutional democracy, it is indeed essential that decisions are not passed at the back of any person. Put otherwise, the person who is affected by a decision must be given sufficient opportunity to participate in the process leading to the decision. This concept emerges from the larger concept of procedural due process and the same is duly recognized in our democracy.

92. The fourth and the last significant limb which is a direct corollary of the principles of natural justice is the opportunity of cross-examination which plays a pivotal role in eliciting the truth. It was considered to be an ingredient of fair hearing in the decision of the Hon'ble Supreme Court in the case of ***State of J&K v. Bakshi Gulam Mohammad***[24]**,** wherein, the denial of the opportunity to cross-examine the witnesses was challenged. However, it was disallowed on the ground that evidence of witnesses was in the form of affidavits and the copies had been made available to the parties.

[24] AIR 1967 SC 122

93. In the case of ***K.L. Tripathi v. State Bank of India***[25]**,** which has been relied upon in the case of ***Sudhir Kumar (supra),*** the Hon'ble Supreme Court was of the opinion that in case, no real prejudice is caused to the party, absence of any formal opportunity of cross-examination will not in itself vitiate the decision arrived at fairly. The relevant paragraph no.32 of ***K.L. Tripathi (supra)*** reads as under:

> *"32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitablly form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement."*

94. The courts, in normal course, do not insist on cross-examination in administrative adjudication unless the circumstances require the same to put up an effective defense. So far as the argument raised by the petitioner that he must have been provided an opportunity to cross examine the 10 random persons who deposed against him is concerned, it is abundantly clear that the adjudicatory authority i.e., respondent no.1-DOE, has relied on the order passed by the SDM, which has rather ultimately relied upon the depositions of the said persons. Therefore, a more plausible view in the given set of facts would be that if any challenge lies to the said deposition, the same has to be raised against the order of the appropriate authority i.e., SDM in the present case and not respondent no.1-DOE.

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[25] (1984) 1 SCC 43

95. Even otherwise, the said demand for cross examination is with respect to the nullity of domicile certificate which is, unlike the income certificate, not the substantial bone of contention which could materially affect the outcome of the present petition. In such circumstances, it would be safe to observe that such opportunity would be an exercise in futility as it holds no bearing on the ultimate decision of cancellation of admission.

96. The second leg of the argument pertaining to natural justice, advanced by the learned counsel for the petitioner, seeks to emphasize upon the fact that the impugned order is not sustainable as per law, since it has been passed by an officer who was not present at the time when hearing was conducted. It is his case that in the absence of a competent authority to decide upon the matter, the impugned order must not hold any relevance.

97. However, in the case of ***Kalinga Mining Corpn. v. Union of India***[26], the Hon'ble Supreme Court while dealing with the scope of judicial review of the administrative actions vis-à-vis the principles of natural justice, held that an order cannot be said to be vitiated if it has been passed by an officer who has not conducted the hearing. The relevant paragraphs of the said decision are reproduced hereunder:

> *"62. It is by now well settled that judicial review of the administrative action/quasi-judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be reappreciated by the Court in exercise of its powers of judicial review.* ***The Court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi-judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the***

[26] (2013) 5 SCC 252

basis of the material available that the Court would be justified to interfere with the decision. The scope of judicial review is limited to the decision-making process and not to the decision itself, even if the same appears to be erroneous.

63. This Court in Tata Cellular v. Union of India [(1994) 6 SCC 651] upon detailed consideration of the parameters within which judicial review could be exercised, has culled out the following principles: (SCC pp. 675 & 677-78, paras 70 & 77)

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

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77. The duty of the court is to confine itself to the question of legality. Its concern should be:

(1) Whether a decision-making authority exceeded its powers?
(2) committed an error of law,
(3) committed a breach of the rules of natural justice,
(4) reached a decision which no reasonable tribunal would have reached, or
(5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
(ii) Irrationality, namely, Wednesbury unreasonableness.
(iii) Procedural impropriety.

> *The above are only the broad grounds but it does not rule out addition of further grounds in course of time."*
>
> *The aforesaid judgment has been followed again and again. It was clearly observed in the said judgment that where the Court comes to the conclusion that the administrative decision is arbitrary, it must interfere. However, the Court cannot function as an appellate authority substituting the judgment for that of the administrator.*
>
> ***70. We also do not find much substance in the submission made by Mr. Krishnan that the Order dated 27-9-2001 is vitiated as it has been passed by an officer who did not give a hearing to the parties. This is clearly a case of an institutional hearing.*** *The direction has been issued by the High Court for a hearing to be given by the Central Government. There was no direction that any particular officer or an authority was to give a hearing. In such circumstances, the orders are generally passed in the relevant files and may often be communicated by an officer other than the officer who gave the hearing."*
>
> *[Emphasis supplied]*

98. On this aspect, the learned counsel for respondent no.2-School has also referred to the decision of the Hon'ble Supreme Court in the case of ***Ossein and Gelatine (supra),*** wherein in terms of Paragraph no.5 and 6, it was held as under:

> *"5. On the issue of natural justice, we are satisfied that no prejudice has been caused to the appellant by any of the circumstances pointed out by the appellant.* ***It is true that the order has been passed by an officer different from the one who heard the parties. However, the proceedings were not in the nature of formal judicial hearings. They were in the nature of meetings and full minutes were recorded of all the points discussed at each meeting. It has not been brought to our notice that any salient point urged by the petitioners has been missed. On the contrary, the order itself summarises and deals with all the important objections of the petitioners. This circumstance has not, therefore, caused any prejudice to the petitioners.*** *The delay in the passing of the order also does not, in the above circumstances, vitiate the order in the absence of any suggestion that there has been a change of circumstances in the interregnum brought to the notice of the authorities or that the authority passing the order has forgotten to deal with any particular aspect by reason of such delay. The argument that the application of the Modis had referred to bonemeal as the raw material used and this was later changed to "crushed bones" is pointless because it is not disputed that all along the petitioners were aware that the reference to bonemeal was incorrect and that the*

Modis were going to use crushed bones in their project. The last contention that some documents were produced at the hearing by the Modis which the petitioners could not deal with effectively is also without force as, admittedly, the assessee's representatives were shown those documents but did not seek any time for considering them and countering their effect. ***There has, therefore, been, in fact, no prejudice to the petitioners. They have had a fair hearing and the Government's decision has been reached after considering all the pros and cons. We are unable to find any ground to interfere therewith.***

6. There was some discussion before us on a larger question as to whether the requirements of natural justice can be said to have been complied with where the objections of parties are heard by one officer but the order is passed by another. Shri Salve, referring to certain passages in Local Government Board v. Alridge [1915 AC 120 : 84 LJKB 72] , Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 3] , Regina v. Race Relations Board, Ex parte Selvarajan [(1975) 1 WLR 1686] and in de Smith's Judicial Review of Administrative Action (4th Edn., pp. 219-220) submitted that this was not necessarily so and that the contents of natural justice will vary with the nature of the enquiry, the object of the proceeding and whether the decision involved is an "institutional" decision or one taken by an officer specially empowered to do it. Shri Divan, on the other hand, pointed out that the majority judgment in Gullappalli Nageswara Rao v. APSRTC [AIR 1959 SC 308 : 1959 Supp 1 SCR 319] has disapproved of Alridge case [1915 AC 120 : 84 LJKB 72] and that natural justice demands that the hearing and order should be by the same officer. This is a very interesting question and Alridge case [1915 AC 120 : 84 LJKB 72] has been dealt with by Wade [Administrative Law, 6th Edn., p. 507 et seq] . We are of opinion that it is unnecessary to enter into a decision (sic discussion) of this issue for the purposes of the present case. ***Here the issue is one of grant of approval by the Government and not any particular officer statutorily designated. It is also perfectly clear on the records that the officer who passed the order has taken full note of all the objections put forward by the petitioners. We are fully satisfied, therefore, that the requirements of natural justice have been fulfilled in the present case.***

[Emphasis supplied]

99. He has also placed reliance on a decision of the Coordinate Bench of this court in ***Rhonpal Biotech (supra)*** case, wherein it was argued by the petitioner that since the order was not passed by the same officer who has granted hearing, the said order was vitiated. This court in terms of paragraph no.42 held as under:

> ***"42. As far as the submission of the learned counsel for the petitioner that the order is vitiated as hearing was granted by one officer and the order passed by another, I again find no merit in the same. In the present case, the oral hearing was followed by a detailed written representation of the petitioner.****The office file of the respondents shows that the said reply was considered threadbare by the respondents. Principles of natural justice cannot be put in a straight jacket and where no prejudice is shown to have been caused by the failure of the authority to strictly comply with some facet of natural justice, the order passed cannot be upset only on ground of such failure. The Supreme Court in Kalinga Mining Corporation Vs. Union of India (UOI) and Ors., (2013) 1 SCR 814, and Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Ors., AIR 1990 SC 1744, has held that where the officer who passed the order has taken full note of the submissions/objections of the party concerned and no prejudice is shown to have been caused by the order being passed by an officer different from the one who granted oral hearing, the requirements of principles of natural justice would be considered to have been duly met."*
>
> *[Emphasis supplied]*

100. It can, thus, be palpably observed that the streams of judicial pronouncements on the aspect whether an order must be mandatorily passed by the officer who has actually heard the proceedings, hold it to be an inapt view in upholding the canons of natural justice. Therefore, there is no merit in the argument of the petitioner that the impugned order is liable to be set aside on such technical grounds. It is trite that the rules of procedure are only handmaidens of justice and not the mistress of justice. In the same breath, it is also important to note that administrative exigencies are always at play and transfers are an indispensable part of the same. Merely because the concerned officer was transferred, it did not displace the relevant material which was placed before the officer and it is not even in question that the decision was passed on the strength of relevant material.

101. At this juncture, it is also pertinent to refer to the decision of the Hon'ble Supreme Court in the case of ***Sudhir Kumar (supra),*** wherein, the court has held that in case of admitted or undisputed facts

where only one conclusion is possible, issuing a writ for observance of natural justice would be futile. Paragraph no.28 of the said decision reads as under:

> ***"28. In some of the early judgments of this Court, the non-observance of natural justice was said to be prejudice in itself to the person affected, and proof of prejudice, independent of proof of denial of natural justice, was held to be unnecessary. The only exception to this rule is where, on "admitted or indisputable" facts only one conclusion is possible, and under the law only one penalty is permissible. In such cases, a Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because Courts do not issue writs which are "futile" -*** *see S.L. Kapoor v. Jagmohan (1980) 4 SCC 379 at paragraph 24. In P.D. Agrawal v. State Bank of India (2006) 8 SCC 776, however, the Court observed that this statement of the law has undergone a "sea change", as follows:*
>
> *39. Decision of this Court in S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379] whereupon Mr. Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364] and Rajendra Singh v. State of M.P. [(1996) 5 SCC 460] the principle of law is that some real prejudice must have been caused to the complainant.* ***The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle.*** *The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula."*
>
> *[Emphasis supplied]*

102. Further, in the case of ***Mohd. Sartaj (supra),*** the Hon'ble Supreme Court in terms of paragraph nos.17 & 18 has observed as under:

> *17. In M.C. Mehta v. Union of India [(1999) 6 SCC 237] this Court has laid down that* ***there can be a certain situation in which an order passed in violation of natural justice need not be set aside under***

Article 226 of the Constitution. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary.

18. In Aligarh Muslim University v. Mansoor Ali Khan [(2000) 7 SCC 529 : 2000 SCC (L&S) 965 : AIR 2000 SC 2783] this Court considered the question whether on the facts of the case the employee can invoke the principle of natural justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. The Court referred to the decisions rendered in M.C. Mehta v. Union of India [(1999) 6 SCC 237] , the exceptions laid down in S.L. Kapoor case [(1980) 4 SCC 379] and K.L. Tripathi v. State Bank of India [(1984) 1 SCC 43 : 1984 SCC (L&S) 62 : AIR 1984 SC 273] where it has been laid down that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) has to be proved. The Court has also placed reliance in the matter of State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] and Rajendra Singh v. State of M.P. [(1996) 5 SCC 460] where the principle has been laid down that there must have been some real prejudice to the complainant. There is no such thing as merely technical infringement of natural justice. The Court has approved this principle and examined the case of the employee in that light. In Viveka Nand Sethi v. Chairman, J&K Bank Ltd. [(2005) 5 SCC 337 : 2005 SCC (L&S) 689] this Court has held that ***the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality.*** *Even the principle of estoppel will apply. In another recent judgment in State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667 : JT (2006) 1 SC 19] while considering the argument that the principle of natural justice had been ignored before terminating the service of the employees and, therefore, the order terminating the service of the employees was bad in law, this Court has considered the principles of natural justice and the extent and the circumstances in which they are attracted. This Court has found in Neeraj Awasthi case [(2006) 1 SCC 667 : JT (2006) 1 SC 19] that if the services of the workmen are governed by the U.P. Industrial Disputes Act, they are protected under that law. Rules 42 and 43 of the U.P. Industrial Disputes Rules lay down that before effecting any retrenchment the employees concerned would be entitled to notice of one month or in lieu thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If retrenchment is to be effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principles of natural justice would be attracted only when the services of some persons are*

> *terminated by way of a punitive measure or thereby a stigma is attached. Applying this principle, it could very well be seen that discontinuation of the service of the appellants in the present case was not as a punitive measure but they were discontinued for the reason that they were not qualified and did not possess the requisite qualifications for appointment.*
>
> *[Emphasis supplied]*

103. In any case, the Hon'ble Supreme Court in the case of ***Kalinga Mining (supra),*** has forthrightly held that this court does not exercise the powers of an appellate court in exercise of its powers of judicial review. Any interference would be called for, only in cases where the findings of the administrative authority are either perverse or lack requisite evidence. At the cost of repetition, it must be noted that the scope of judicial review is limited to the decision-making process and not to the decision itself, even if the same appears to be undesirable. In the instant case, the petitioner has failed to show any cogent reason which would indicate that either the due procedure, as required by law, was not followed in the process of orchestrating a fair hearing to enable the petitioner or his father to present their case or any real prejudice has been caused to the petitioner.

104. Conclusively, it is the impetuous malfeasance of the father of the petitioner, yearning for the admission of his son *dehors* the applicable regulations, which has led to tribulation for the petitioner and caused a debacle of the noble motives which the EWS reservation seeks to achieve.

105. The Hon'ble Supreme Court, while upholding the validity of 25 percent reservation for economically poor in the private unaided

schools, in the case of ***Society for Unaided Private Schools of Rajasthan v. Union of India***[27], has held as under:

> *"32. Article 21 says that "no person shall be deprived of his life ... except according to the procedure established by law" whereas Article 19(1)(g) under the chapter "Right to freedom" says that all citizens have the right to practise any profession, or to carry on any occupation, trade or business which freedom is not absolute but which could be subjected to social control under Article 19(6) in the interest of general public. By judicial decisions, right to education has been read into right to life in Article 21. A child who is denied right to access education is not only deprived of his right to live with dignity, he is also deprived of his right to freedom of speech and expression enshrined in Article 19(1)(a). The 2009 Act seeks to remove all those barriers including financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission".*

106. It can, therefore, be inferred that the legislative intent behind the enactment of legislations in benefit of the economically marginalized sections was to ensure that the shackles of poverty are broken to help children from weaker sections to gain quality education. The EWS reservation in schools is, thus, not merely an enticing promise but a sincere attempt to maintain equitable standards of education for all in a multifaceted socio-economic structure. As the custodian of the constitution which seeks to weed out arbitrariness, this court cannot allow anyone to overwhelm the scheme of the welfare legislation in question by playing maneuvers.

107. In light of the aforesaid, this court does not find any reason to interfere with the show cause notice and impugned order dated 09.02.2021 as well as the letter issued by respondent no.2-School dated 15.02.2021.

108. However, this court is also conscious of the fact that the petitioner is not at fault in the whole saga. It is the father of the

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[27] (2012) 6 SCC 1

petitioner who perpetuated the misdeeds for which the petitioner should not be made to suffer at this belated stage, precisely when the petitioner has been continuing his studies since 2013. Therefore, in the peculiar facts and circumstances of the present case, this court directs that the admission of the petitioner in respondent no.2-School shall remain undisturbed. However, the admission of the petitioner and his continued education hereinafter shall be recognized under the General Category in place of EWS category. The extant rules and regulations governing the admission of students belonging to General Category, including the payment of fees, shall apply hereinafter.

109. The aforesaid direction is, however, subject to heavy cost that should be imposed in the instant case for obtaining admission under the EWS category by illicit means and depriving a deserving candidate. In view of the fact that nothing could be more unfortunate for a school-going child, at the stage of learning ethical and moral values, being made to suffer on account of the misdeeds of his father, only a sum amounting to the tune of Rs. 10,00,000/- (Rupees ten lacs only) is imposed as costs in lieu of the cancellation of the admission of the petitioner *vide* orders dated 09.02.2021 and 15.02.2021, and in lieu of continuation of the petitioner's admission. Let the same be deposited with respondent no.2-School within six months of the passing of this judgment. The said amount be utilized by respondent no.2-School for aiding the needs of the children admitted in respondent no.2-School in EWS category, under intimation to respondent no.1-DOE.

110. The aforesaid cost has been imposed after assessing the affluent financial well-being of the petitioner's father, which is evident from

the ITRs of the subsequent years, numerous foreign trips etc. and also considering the fact that the petitioner has eaten up the seat of a deserving child, who would have otherwise enjoyed the fortune of quality education. If the cost is not deposited by the father of the petitioner within six months as stipulated above, the petitioner's admission shall be deemed to be cancelled in accordance with the impugned orders dated 09.02.2021 and 15.02.2021 and the amount shall be recovered as the arrears of land revenue from the petitioner's father.

111. The judiciary is said to be tacitly in a constant dialogue with the legislature through the respective constitutional roles performed by them, with a sole aim of strengthening the democratic values. The said dialogue is not exclusive to the legislative or executive domain and the judiciary, owing to its peculiar position as a constitutional arbiter, also engages in a parallel dialogue with the society on a case-to-case basis. In fact, this dialogic jurisprudence has been acknowledged by the Hon'ble Supreme Court while dealing with various issues and has proved to be an effective tool for fulfilling the legislative intent and constitutional vision. Therefore, before parting ways, it is significant to highlight the clarion call to revisit the income criterion set out for availing the benefits of the EWS reservation scheme in schools. While adjudicating the present case, it has come to the notice of this court that the minimum wage of an unskilled labourer in Delhi is Rs 17,494/- per month but startlingly, as per the existing eligibility criterion, even children of such labourers are not entitled for reaping the benefits of the EWS scheme for securing admission in schools. It is, at any prudent stretch of imagination, too far-fetched to assume that the total parental income of a child seeking admission under EWS

category and living in a metropolitan city like Delhi shall be below Rs. 1,00,000/- per annum.

112. In the considered opinion of this court, the threshold income of Rs. 1,00,000/- does not precisely reflect the economic hardships faced by the families in the contemporary times and therefore, it ought to change with the dynamism of the economic structure of the society. A comparative analysis of the said threshold income criterion in the NCT of Delhi with rest of the States and Union Territories would signify that the NCT of Delhi has the lowest requisite income criteria as compared to the amount of Rs. 8 lakhs per annum followed by most of the States. It is apparently forcing the common people, who otherwise fall in the bottom line of the economic strata, to resort to unfair means to secure admission for their children or to keep their hands off from the benefits of welfare legislation. In the present times, injustice may or may not reach the courts, but the constitutional courts must endeavour to reach the injustices.

113. It is deeply agonizing to see the complete apathy and lackadaisical attitude of the State authorities which is at the helm of protecting the educational rights of the economically weaker sections of the society, which flow from the fundamental Right to Education. The efficacious realization of the Constitution's inherent objectives go beyond mere drafting and perusal. To respect the letter and spirit of law, it is imperative that the responsible instrumentality diligently supervises the implementation of the law. A law, however, benevolent in its intentions, remains inefficacious unless those entrusted with its execution and implementation judiciously discharge their duties. This gains greater relevance in the context of beneficial legislations, which

attend to the needs of individuals marginalised on the fringes of society.

114. The very edifice of the idea of transformative constitutionalism rests on the pillar of constitutional morality. The idea is to adhere to the moral standards of the Constitution in order to achieve transformative goals i.e., instilling the principles of equality, dignity, liberty and fraternity into the society to bring about a social change. It is significant to reminisce the excerpts of the infamous 'Grammar of Anarchy' speech of Dr. B.R. Ambedkar who remarked,

> *"Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot."*

115. In the instant case, there is no fact to indicate that respondent no.1-DOE or the Government has conducted any random inquiry to test the genuineness of candidates. If an inquiry is directed at this stage, the same would possibly create a havoc and chaos in the education system. The possibility of finding a large number of self-declarations to be false cannot be ruled out. Therefore, the manner of issuance of certificate should be made more responsive, credible and transparent so that that the same can benefit the rightful beneficiaries. There has to be some sanctity for issuing the certificates for reaping the benefits and it ought not to be issued on flimsy grounds.

116. It is also pertinent to note that the income certificate required for the purpose of continuation of admission in EWS category as per the 2011 Order is merely based on the self-declaration of income which further exacerbates the misery of the deserving candidates as such certificates are more susceptible to misrepresentation in absence

of any resilient framework in place for checking the veracity of the same.

117. In view of the aforesaid facts, this court considered it appropriate to seek assistance from respondent no.1-DOE and accordingly, on 30.10.2023, personal appearance of the Director, DOE was directed to clarify certain relevant aspects. On 01.11.2023, the Director, DOE appeared before the Court and apprised that pursuant to the concerns raised by this Court, he has proposed to increase the threshold income as per 2011 Order, from existing amount of Rs. 1 lakh to Rs. 2.5 lakhs per annum. However, the proposed increase also does not seem to ameliorate the miserable situation prevailing in the schools of NCT of Delhi.

118. The welfare legislations are the heart and soul of a welfare State and act as catalysts in realizing the ideals of an egalitarian society and reinforce the aim of our nation's tryst with destiny. The appropriate Government is reasonably expected to respond to the changing needs of the society, considering the relevant factors affecting such welfare measures. In fact, it is an obligation upon the State to strive towards achieving a social, economic and political justice for its people, which is deeply embedded in the Preamble to the Constitution of India. Therefore, if the appropriate Government choses to put such legislations on the back burner, at times, the judiciary has to step in for the people who lack wherewithal to draw the intended benefits.

119. Considering the aforesaid and to align the scheme with its intended purpose and to curb the evils such as the one practiced in the instant case, it is deemed necessary to pass the following directions to

ensure the implementation of the RTE Act and 2011 Order in its true letter and spirit:

i. The Government of NCT of Delhi, after assessing the prevailing economic conditions in the NCT of Delhi and considering other relevant factors therein, shall take a decision as expeditiously as possible to increase the existing threshold income of Rs. 1 lakh per annum to a commensurate amount which corresponds to the living standards of the intended beneficiaries of the scheme in the NCT of Delhi. Needless to observe, the criteria must be scientific and must be based on actual data.

ii. Till the aforesaid exercise is done and appropriate amendment is made in the scheme, the required income under Clause 2(c) of 2011 Order shall be considered to be increased to Rs. 5 lakhs instead of Rs. 1 lakh as all the other States have the threshold amount in question to the tune of almost Rs. 8 lakhs.

iii. The aforesaid directions are made operational with immediate effect.

iv. The Government of NCT of Delhi must immediately eradicate the mechanism of self-declaration and bring in place an appropriate framework for continuation of free seats in schools as envisaged under Clause 6 of 2011 Order.

v. The Government of NCT of Delhi must ensure that DOE shall duly exercise its power under Clause 5(e) of 2011 Order to diligently verify the admissions at regular intervals and to ensure that nobody is admitted without fulfilling the requisite eligibility.

vi. In order to suitably implement the directions at (iv) and (v) above, the DOE shall frame a Standard Operating Procedure (SOP) for income verification and regular monitoring of the eligibility criteria.

120. With the aforesaid directions, the petition stands dismissed with the above-mentioned costs. Pending application(s) are also disposed of accordingly.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 05, 2023
P/*shs*