

(1998) 04 AHC CK 0098
In the Allahabad High Court
Case No : C.M.W.P. No. 32175 of 1995

Committee of Management, D.A.V. Inter College, Aligarh and
another

APPELLANT

Vs

U.P. Secondary Education Services Commission, Allahabad
and others

RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10(1)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3), 16G(5)

Uttar Pradesh Secondary Education Service Commission (Procedure and Control of Conduct of Business) Regulations, 1983 — Regulation 5

Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 — Regulation 35, 36, 37, 44, 5

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 21

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10(1)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3), 16G(5)

Uttar Pradesh Secondary Education Service Commission (Procedure and Control of Conduct of Business) Regulations, 1983 — Regulation 5

Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 — Regulation 35, 36, 37, 44, 5

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 21

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10(1)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3), 16G(5)

Uttar Pradesh Secondary Education Service Commission (Procedure and Control of Conduct of Business) Regulations, 1983 — Regulation 5

Uttar Pradesh Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 — Regulation 35, 36, 37, 44, 5

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 21

Citation : (1998) 2 AWC 1556 : (1998) 2 UPLBEC 1532

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Dr. R.G. Padia and Prakash Padia, for the Appellant; S.C., A.K. Yadav and R.N. Singh, for the Respondent

Judgement

O. P. Garg, J.—This petition is a glaring instance of the litigative zeal which is permeating the educational sphere. To what extent a Principal appointed on permanent basis after due selection and recommendation having been made by the U. P. Secondary Education Services Commission could be subjected to harassment and nagging by being suspended more than once and terminated on flimsy grounds and to suffer humiliation by allowing him to sit idle because he failed to toe the line of the management and refused to fall prey to its evil and selfish designs and aggrandizement is the theme of present litigation. Such a fruitless repetitive litigation has to be deprecated. This lamentation comes in the wake of the following facts.

There is an aided and recognised institution with the name of D. A. V. Inter College, Aligarh which is governed by the provisions of U. p. Intermediate Education Act, 1921 and the U. P. Higher Secondary and Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act. 1971 as well as U. P. Secondary Education Services Commission Act, 1982. Vinod Kumar Saraswat (for short "Saraswat") respondent No. 3 was appointed as permanent Principal of the College and he joined his duties on 29.1.1985. At that time. Satish Chand Bhalaji, who is presently Manager of the Committee of Management of the College, was Treasurer of the Committee. It appears that right from the very beginning, there was a tussle between the Committee of Management, on one hand, and Saraswat who joined the Institution after having been selected as Principal by the U. P. Secondary Education Services Commission (hereinafter referred to as "the Commission"), on the other. The Committee of Management was not satisfied with the work, conduct and functioning of Saraswat and rating his performance as thoroughly unsatisfactory, thought it proper to terminate his services even during the period of probation and consequently made a recommendation for approval u/s 21 of the U. P. Secondary Education Services Commission Act, 1982 (hereinafter referred to as "the Act of 1982"). The proposal of the Committee of Management did not find favour with the Commission. Saraswat, therefore, continued to work as Principal on permanent basis. The management was under clouds for variety of reasons and, therefore, an Authorised Controller was appointed and performed the functions of the Committee of Management during the period March, 1986 to March, 1990. The reason why Saraswat became an eyesore to the Committee of Management is not too far to seek. When Saraswat took over as Principal, he found that the office bearers of the Committee of Management had not deposited the amount collected towards the maintenance fund and the Boys' fund in the respective accounts of the Institution and were utilising the said money for their personal gain and business. Saraswat took a bold step and deposited a sum of Rs. 73,279 in proper accounts in the month of February, 1985. This act of Saraswat Invited

the wrath of the Committee of Management. After the term of the Authorised Controller expired, the Committee of Management suspended Saraswat on 12.9.1992. Suspension order was subject to approval of the Commission /District Inspector of Schools (for short "D.I.O.S.") and since it was not approved within the period prescribed, the resolution of suspension lapsed. The Committee of Management filed a writ petition in which a direction was Issued on 11.11.1992 to the D.I.O.S. to pass appropriate orders. Two separate orders, dated 13.11.1992 and 17.11.1992 were passed by the D.I.O.S., the effect of which was that the resolution of suspension could not be approved as it has lapsed on account of passage of time and that Saraswat shall continue to work as Principal. Again, the Committee of Management filed another writ petition in which an order was passed on 24.11.1992 directing the D.I.O.S. to consider the proposal of suspension of Saraswat on merits in accordance with the provisions of Section 16G (5) of the Intermediate Education Act. The D.I.O.S. thereafter passed an order on 22.12.1992 disapproving the proposal for suspension on the ground that the charges against Saraswat are not so serious as would entail, in the event of proof, dismissal, removal or termination of his services. The Committee of Management was not satisfied with the order passed by the D.I.O.S. and again challenged the order dated 22.12.1992 by filing Writ Petition No. 3950 of 1993 which was dismissed, in limine on 13.1.1993. It appears that in the month of May, 1993, the management was taken over by the Authorised Controller. The disciplinary enquiry and all other matters against Saraswat were dropped. The Committee of Management challenged the appointment of Authorised Controller and in pursuance of the Interim order passed by this Court, the Committee of Management was again placed in charge of the affairs of the institution.

2. The Committee of Management again placed Saraswat under suspension on 23.2.1994 and referred the matter for approval to the Commission/D.I.O.S. The required approval was not granted and consequently the Committee of Management filed a Writ Petition No. 11557 of 1994 which was disposed of by order dated 12.4.1994 by Hon'ble V. Bahuguna, J. It was directed that the departmental enquiry against Saraswat may be completed within a period of four months and that the management shall be at liberty to take work from Saraswat or not but he shall be paid his salary. The Committee of Management as well as Saraswat filed two separate Special Appeals which were disposed of on 12.5.1994 by a common judgment substantially upholding the order dated 12.4.1994 passed by learned single Judge in Writ Petition No. 11557 of 1994. One Hari Narain Singhai, Advocate was appointed as Convenor of Committee of Enquiry, which was required to go into the various charges against Saraswat. Since Saraswat was not allowed to work as the Principal of the institution, a proposal was mooted to appoint Lala Baboo Gupta--respondent No. 4 as officiating Principal as the Lecturers senior to him refused to take over the charge of Principal. There was some hesitation on the part of the authorities to accept Lal Baboo Gupta as officiating Principal and, therefore, the Committee of Management has to file Writ Petition No. 23336 of 1994 which was disposed of

on 17.8.1994. The concerned authorities accepted and acknowledged Lal Baboo Gupta as Acting/Officiating Principal and attested his signatures.

3. It is alleged by the petitioners that in spite of best efforts of the enquiry committee, the charge-sheet could not be delivered to Saraswat as he has been avoiding to receive the same. Saraswat did not participate, it is alleged, in the enquiry proceeding and consequently a report of enquiry was submitted on 27.7.1994. The Committee of Management held Its meeting to consider the report of enquiry on 4.8.1994 in which Saraswat was also Invited and he did appear. The Committee of Management took the decision to terminate the services of Saraswat and accordingly submitted all the relevant papers to the Commission through D.I.O.S on 9.8.1994. The matter remained pending for a number of months and ultimately, the Commission fixed 8.6.1995 for personal hearing of the parties with reference to the representation made by Saraswat before the Commission. The Secretary of the Committee of Management on account of his illness and other reasons was not able to appear before the Commission on the specified date and sought adjournment. It was not allowed and after considering the material on record, particularly the report of the Sub-Committee (Punishment), the Commission did not approve the proposal to terminate the services of Saraswat and passed appropriate orders on 26.6.1995 which were communicated to the petitioners on 29.6.1995. The Committee of Management challenged the order passed by the Commission before this Court by filing Writ Petition No. 18465 of 1995 which was disposed of on 30.8.1995 by Hon"ble M. Katju, J. It was directed that the Commission shall re-examine the matter, rehear the parties and allow them to lead their evidence. In pursuance of the orders of this Court, the Commission appointed Dr. Moti Lal Varma as member of the Sub-Committee (Punishment) who submitted his report, dated 23.9.1995, after giving opportunity to both the parties. This report of the Sub-Committee was considered by the Commission in its meeting on 25.9.95 and the proposal to punish Saraswat by terminating his services was disapproved. The communication was Issued by the Secretary of the Commission on 7.10.1995, which is Annexure-14 to the writ petition.

4. By means of the present writ petition, the Committee of Management has challenged the order passed by the Commission refusing to approve the proposal to terminate the services of Saraswat and it is prayed that the order dated 26.9.1995 passed by the Commission and communicated to the petitioners on 7.10.1995 (Annexure-14 to the writ petition) be quashed and a direction be Issued in the nature of writ of mandamus to command the Commission to reconsider the question of grant of approval to the proposal to terminate the services of Saraswat after giving full opportunity to the petitioners and giving them the copies of documents submitted by Saraswat directly to the Commission. It is also prayed that Saraswat be restrained from interfering in the functioning of the institution as Principal of the College although he may be paid his full salary and allowances as Principal of the institution.

5. Counter and rejoinder-affidavits have been exchanged. Heard Dr. R. G. Padia, learned counsel for the petitioners and Sri V. K. Singh, learned counsel for the contesting respondent No. 3, Saraswat.

6. The petitioner-Committee of Management is by and large, aggrieved by the refusal of the Commission to accord approval to the proposal to terminate the services of Saraswat. After receiving the necessary papers and proposal from the Committee of Management through the D.I.O.S., the Commission referred the matter to its Sub-Committee of Punishment. Both the parties, i.e., the Committee of Management as well as Saraswat appeared before the Sub-Committee presided over by Sri Moti Lal Varma and filed relevant Papers/representations. The report of the Sub-Committee as said above, was accepted by the Commission. Dr. R. G. Padia, learned counsel for the petitioner urged that the Sub-Committee of the Commission was not Justified in receiving the papers/documents from Saraswat and could not consider those papers/documents straightaway without giving copies of the same to the petitioner and an opportunity to rebut the said papers : that the Sub-Committee could not, like an enquiry committee, appraise the evidence placed before it by Saraswat for the first time who himself had no right to directly submit the papers before the Sub-Committee/Commission. According to Dr. Padia, the entire approach adopted by the Sub-Committee of the Commission was illegal, Inasmuch as, it reviewed every allegation in the charge-sheet individually in the light of the reply given by Saraswat but without considering the case and the documents of the petitioner ; that the Subcommittee has wrongly observed that the provisions of Regulations 35, 36, 37 and 44 were violated in the conduct of the enquiry against Saraswat. Dr. Padia vehemently argued that the Commission could not delegate the matter of holding enquiry and submitting the report to one of its members and thereafter consider the report of the said member and accept the same ; that in any case, the member heading the Sub-Committee should not have associated himself while his report was considered by other members of the Commission. Sri Padia was at pains to point that the order dated 25.9.1995 is virtually reproduction of the earlier order dated 26.6.1995 in respect of the decision regarding all the charges discussed in the impugned order and consequently the impugned order suffers from no-application of mind. All the above submissions made on behalf of the petitioner have been repelled and seriously criticised by Sri V. K. Singh, learned counsel for the respondent No. 3--Saraswat.

7. Shorn of all superfluities, the moot points, for consideration and determination in the present petition are culled out as follows :

(i) Whether in the present case, the Sub-Committee and Commission have acted in flagrant violation and disregard of the principles of natural justice? and,

(ii) Whether the Commission has the power, authority and competence to appoint a Sub-Committee to sift the proposals of punishment and on the basis of the recommendations of the Sub-Committee, the Commission was justified in refusing to accord approval to the proposal of termination of the services of

Saraswat?

8. As regards the first point. It may succinctly be mentioned that the various submissions made by Dr. Padia on behalf of the Committee related to the procedure adopted by the Sub-Committee which was earlier headed by Sri Saligram Yadav on the basis of whose report the Commission had passed order dated 26.6.1995 and communicated to the petitioner on 29.6.1995, vide Annexure-12. The aforesaid order passed by the Commission was challenged by the petitioner by filing Civil Misc. Writ No. 18465 of 1995 which was disposed of on 30.8.1995, vide Annexure-13. By virtue of the order of this Court, the Commission was required to deal with and consider the matter afresh after hearing both the parties and providing them due opportunity to lead their evidence. It was virtually an order of remand and after the matter was remanded back to the Commission, Sri Moti Lal Varma acted as the Presiding Officer of the Sub-Committee (Punishment) on behalf of the Commission. Detailed written submissions along with documents were filed before the Sub-Committee by the petitioner on 18.9.1995. Both the parties were allowed to adduce evidence and were heard on 18.9.1995 by the sub-committee. On behalf of the petitioner, though the ailing Manager had appeared before the Sub-Committee, the case on behalf of the petitioner, i.e., Committee of Management was canvassed by Sri Rajendra Prasad Gupta, Deputy Manager. It was only when both the parties gave it in writing that they did not want to say anything further and were fully satisfied with the opportunity of hearing given by the Commission, that the Sub-Committee/Commission proceeded to decide the matter finally. The petitioner was not prevented from bringing on record any documents or to rebut the documents or the allegations contained in the representation of Saraswat. The Sub-Committee submitted its detailed report to the Commission on 23.9.1995 and it was this report of the Sub-Committee which was taken up for consideration by the commission on 25.9.1995. The report of the Sub-Committee was accepted.

9. Though it is not necessary to mention about the various allegations in respect of which Saraswat was charged, a passing reference may, however, be made about the conduct and performance of Saraswat. They are, firstly, that Saraswat had addressed the letter dated 29.9.1993 to the D.I.O.S. directly about the alleged financial Irregularities on the part of the management ; secondly, on 23.8.1993 at the prayer site in the institution, Saraswat made a speech before the students to provoke them to adopt agitational methods against the management which resulted in indiscipline and that .Saraswat had Informed somebody in L.I.U. calling the Manager of the institution as "Badmash" and to keep a track of his record by opening a diary so that he (Badmash) may be taught a lesson ; thirdly Saraswat wrote a letter on 14.9.1993 to the Manager about making an arrangement of a cycle stand and subsequently he did not allow the contractor of the cycle stand to function ; fourthly, a class IV employee was not deputed at the Manager"s place for distribution of dak ; fifthly salary of Sri Mahendra Kumar Gupta, Assistant teacher was not released in spite of the fact

that medical leave from 1.1.1993 to 31.12.1993 had been sanctioned by the Manager ; sixthly, GPF loan papers of Sri Mahendra Kumar Gupta, Assistant teacher were allowed to spend for a long time and on various occasions Saraswat only jotted down the remark "seen" ; seventhly, students were provoked by Saraswat in connection with the alleged bungling by the Manager in getting the black board's painted ; eighthly, the bills of Rathi Stationery, who supplied stationery and other articles, were not cleared and a sum of Rs. 12,500 was embezzled by Saraswat ; ninthly, he committed financial irregularities by making payment of expenses on two Body Guards out of the security/reserved fund and caution money of the students in respect of which there was an audit objection ; tenthly, vouchers for the period 1.8.1986 to 31.7.1988 were passed-for payment by Saraswat acting singly and without obtaining approval and signatures of the Authorised Controller and lastly, audit report has taken an exception about the expenses shown to have incurred on the distribution of sweets in respect of which vouchers were incomplete.

10. The enquiring body did not take into consideration any evidence and in the absence of any explanation or defence by Saraswat, all the above charges Were treated to have been automatically proved. The Sub-Committee (Punishment) of the Commission has taken the view that enquiring body was obliged to require the management to lead evidence in support of each and every allegation and charges even though Saraswat failed to associate with and co-operate in the enquiry. Taking into consideration the representation and the material brought by both the parties, the Sub-Committee further came to the conclusion that the veracity and credibility of the various charges was highly redolent of doubt and suspicion and most of the charges which were, if at all, in the nature of working lapses, given the colour of undue seriousness and gravity and that some of the charges were manufactured with a view to harass, nag and punish Saraswat. The Sub-Committee was of the view that the charges lacked bona fide and were vague and unsubstantial and that they were imbued with a feeling of mala fide. On the basis of these findings, the Sub-Committee recommended that the proposal of termination of services of Saraswat cannot be approved. The report of the Sub-Committee (Punishment) was approved by the Commission in its meeting held on 25.9.1995 and on its basis, the Secretary of the Commission issued the impugned order dated 7.10.1995, Annexure-14, which recites that the Commission in its meeting dated 25.9.1995 discussed the subject of punishment of Saraswat and after due consideration of the report of Sub-Committee (Punishment), the Commission has taken a decision not to approve the proposal dated 4.3.1994 of the Committee of Management to terminate the services of Saraswat. With this letter, the report of the Subcommittee (Punishment) was sent to D.I.O.S., Aligarh with a copy to the petitioner as well as Saraswat respondent No. 3.

11. Dr. R. G. Padia urged that an unsavoury feature of the case is that the Commission has not applied its judicial mind in adopting and approving the report given by the Sub-Committee (Punishment) as it has passed a non-

speaking order. A complete reply to the submission of Dr. Padia is to be found in the various decisions of the Supreme Court in *Ram Kumar Vs. State of Haryana*, ; *S.N. Mukherjee Vs. Union of India*, ; *Som Datt Datta Vs. Union of India (UOI) and Others*, and *State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover*, . Though these cases pertain to approval of the enquiry report by the disciplinary authority, appellate authority or the reviewing authority, the fact remains that it was maintained in the above cases that it was not necessary for the disciplinary authority or the appellate or reviewing authority to discuss the evidence and give reasons for their findings. If they have agreed with the finding of the enquiry officer/committee. The rationale behind the above rulings is that a disciplinary authority is not obliged to give reasons in case of concurrence with findings of the enquiry officer/committee. In the instant case, the Commission has agreed with the report of the Sub-Committee (Punishment) and was not in disagreement on any point. Therefore, it was not necessary for the Commission to detail the reasons which impelled it to agree with the finding of the Sub-Committee and it was more than enough if the Commission has mentioned that after due consideration of the report of the Sub-Committee, it has taken a decision in keeping with the finding of the Sub-Committee to disapprove the proposal of termination of services of Saraswat.

12. It was further urged on behalf of the petitioner that notion of affording an opportunity to answer charges involves necessity of granting fair opportunity, i.e., some reasonable time depending upon the circumstances of each case and this connection, a reference was made to a Division Bench decision of this Court in *Prabhat Kumar v. Board of High School and Intermediate Education, U. P., Allahabad* 1997 ALJ 1391. I have thoroughly studied the said ruling and find that the various observations made therein are not applicable to the facts of the present case. *Prabhat Kumar's* case (*supra*) related to the similarity in the answers to certain questions as recorded by two examinees and it was held that no reasonable person can come to a conclusion that petitioner--Prabhat Kumar used unfair means in recording answers found in his answer book. The principle of natural justice as enunciated in the said ruling does not squarely apply to the facts of the present case.

13. Section 21 of the Act of 1982 deals with the restriction on dismissal, removal or reduction in rank of teachers including the Principal. The above punishments cannot be imposed on a teacher unless prior approval of the Commission has been obtained. The Uttar Pradesh Secondary Education Services and Commission (Procedure for Approval of Punishment) Regulations, 1985 have been framed with a view to operate the provisions of Section 21. After the receipt of the report of enquiry, by the D.I.O.S., relevant papers are to be submitted to the Commission and Regulation 5 of the aforesaid Regulations provides for the documents which the D.I.O.S. has Invariably to submit to the Commission. Under Regulation 7, the Commission may call for any document considered relevant to the case from the management or the Inspector. Under Regulation 8, the Commission has been empowered to approve or disapprove the punishments

proposed after due consideration of the matter or to Issue any other direction deemed fit in the case. A bare reading of the provisions of Section 21 read with Regulation of 1985, aforesaid, makes it clear that the Commission while deciding whether or not to grant approval for the removal or termination of a teacher, has necessarily to go into the merits of the case and apply its mind independently to the question whether the evidence on record justified the removal/termination. In Committee of Management, Bishambhar Saran Vaidik Inter College, Jaspur, Nainital and another v. U. P. Secondary Education Services Commission and others. 1995 SCC (L&S) 1155. Hon"ble Supreme Court observed that the Commission is a high powered body and is a body entrusted with the important function of supervising the action taken by the management against teachers. It has to discharge its responsibilities circumspectively, it cannot exercise its function effectively unless it scrutinises the material and applies its mind carefully to the facts on record. Hence, if the Commission goes through the entire record and the merit of the action taken, its actions cannot be faulted. It was held that the High Court has committed an error in holding that the Commission could not have gone into the merits of the case. In the aforesaid case, the Commission went through the report of the enquiry committee and the evidence on which it was based and found that the enquiry was vitiated because the charges were not framed by the enquiry committee but by the Committee of Management and hence the enquiry committee had violated the principles of natural justice and the proceedings before the enquiry committee were mala fide. In that case, the Commission, therefore, did not approve of the action of the Committee of Management in terminating the services of the charged employee. In view of this decision of the Supreme Court, the submission of Dr. Padia that the Commission was not empowered to accept the representation and the evidence of Saraswat turns out to be totally untenable. As said above, in the instant case, after this Court had passed an order on 30.8.1995, both the parties had led their evidence and the Sub-Committee of the Commission proceeded to make its recommendations only when both the parties had given in writing that they were fully satisfied with the opportunity of hearing given to them and they have nothing more to say in the matter. As a matter of fact. In order to arrive at the correct conclusion, it is necessary for the Commission to look into the various documents and the evidence which was collected during the course of enquiry and it is for this purpose and end in view that under Regulation 5 of the Regulations of 1985, referred to above, the proposal of punishment is to accompany with all the relevant documents.

14. In Committee of Management, Shahganj Public Inter College, Shahganj v. U. P. Secondary Education Commission, Allahabad and another 1995 (3) UPLBEC 1593, learned single Judge of this Court held that the Commission is not supposed to act as a Court and comply with the strict procedure of providing opportunity of hearing and cross-examination to the concerned parties. The Commission is required to hear the concerned teacher as well as also to take into consideration the viewpoint of the management. No personal hearing is

contemplated in these proceedings. The viewpoint of the management and the teacher can be examined on the basis of the documents submitted by both of them. In the instant case, the Commission was in effect examining the record placed before it by the management of the Institution and the record placed by the charged Principal of the Institution. The entire record relating to the termination of services of Saraswat was before the Commission and on examining the entire record, the Commission arrived at the finding that no charge has been made out against Saraswat and the mandatory procedure for terminating the services of the teacher has not been complied with as is contemplated under Regulations 35, 36, 37 and 44 and consequently, the Commission has disapproved the proposal to terminate the services of Saraswat. In these circumstances, the requirement of observance of the principles of natural justice is not at all attracted and the order passed by the Commission cannot be said to be in violation of the principles of natural Justice or cannot be faulted on the ground of the order being in flagrant violation of the principles of fair play.

15. At this stage, it would be pertinent to make a reference to the various observations made by Hon"ble Supreme Court in Zora Singh, , in which it was held that a superior court would not interfere if there was legal evidence before the Tribunal upon which it was entitled to rest its findings. In a case where the conclusion is based on objective facts and evidence and it is found that there was legal evidence before the Tribunal, and even if some of it was irrelevant, the finding could be sustained on the rest of the evidence and the interference of the superior court was not called for.

16. The main thrust of Dr. R. G. Padia with reference to the submission about the violation of the principles of natural justice was that while material available before the Commission was considered by the Sub-Committee (Punishment) and it was the Sub-Committee which heard the parties, the Commission, as a body, did not examine the material nor heard the parties and in this view of the matter, the principles of natural justice stood disregarded. Dr. Padia fortified his submissions on the basis of a Full Bench decision of this Court in Iqbal Ahmad v. State of U. P. and others (1998) 1 UPLBEC 83 . In which after elaborately discussing the rationale and the principles of natural justice, it was held that it was obligatory on the State Government to provide an opportunity of hearing to the Chairman of the Town Area Committee, confirming the order of removal passed by the District Magistrate and that the State Government, should indicate reasons in its order of confirmation as are given by the court of law although these reasons may not be elaborate, i.e., the order should be a speaking order. In the aforesaid Full Bench case, various decisions of the Supreme Court, namely, State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, ; A. K. Kraipak and others v. Union of India and others. Am 1970 SC 150 : Suresh Koshy George Vs. University of Kerala and Others, ; Shri Bhagwan and Another Vs. Ram Chand and Another, ; Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, ; S.L. Kapoor Vs. Jagmohan and Others, ; S. N. Mukherjee v. Union of

India (supra) ; Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, ; Union of India and others Vs. Mohd. Ramzan Khan, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , were taken into consideration and the final position as it emerged was that rules of natural justice are not rigid rules : they are flexible and their application depends upon the setting and the background of statutory provision ; nature of the right which may be affected and the consequences which may entail Its application. The question of applicability of the principles of natural justice is to be decided on the facts and circumstances of each case. An administrative authority in dealing with a judicial or quasi-judicial proceeding is required to follow the principles of natural justice and fair procedure and give an opportunity of hearing to the delinquent. In Iqbal Ahmad's case (supra), the Chairman of the Town Area Committee was removed by the District Magistrate and the order of removal, if it was to take effect, required confirmation by State Government. It was in this context that the Full Bench has taken the view that it was obligatory on the State Government to provide an opportunity of hearing to the chairman before confirming the order of removal passed by the District Magistrate.

17. As said above, it is well-settled proposition of law that no strait-jacket is provided for the observance of principles of natural justice. No hard and fast rule can be laid down for testing the question as to whether the principles of natural justice has been complied with or not. It depends on the nature of the proceedings and the procedure adopted by the Court, tribunal or the authority. In Managing Director, E.S.I.L., Hyderabad v. B. Karunakaran (supra), the Hon'ble Supreme Court held as follows :

".....The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just right. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case....."

There is no dispute about the fact that the Commission while exercising Its powers, is performing quasi-judicial functions and the principles of natural justice extend even to the administrative orders passed by the Commission. This conclusion flows from the various decisions of the Supreme Court, referred to above. In the instant case, the Commission undisputedly, had the complete record of enquiry containing the charge-sheet, findings recorded by the enquiring body, resolution of the Committee of Management, besides the various documents, applications and representations filed" before the Commission itself. Saraswat has denied all the charges against him and has set out the facts which led the Commission to conclude that the charges were not bona fide. A perusal of the entire record by the Commission, followed by the opportunity of personal hearing afforded to both the parties, particularly after the directions were Issued by this Court in Civil Misc. Writ Petition No. 18465 of 1995, satisfies the

requirement of the observance of principles of natural Justice. As a matter of fact, both the parties were satisfied with the opportunity of hearing afforded by the Commission and it was for this reason that they have given in writing to the Commission that they do not want any further hearing in the matter as they have been heard by the Commission to their full satisfaction. In view of this fact, it is now wide off the mark to submit that the Commission did not give an opportunity of hearing to the petitioner or that it has. In any manner, acted in violation of the principles of natural justice.

18. On behalf of the petitioner, however, it was urged by Dr. R. G. Padia that the entire material was perused by the Sub-Committee of the Commission and the opportunity of hearing was also given by the Sub-Committee and since the Commission, before approving the report of the Sub-Committee, had not heard the parties, particularly the petitioner, there was a flagrant violation of the principles of natural justice. In substance, the submission of Dr. Padia boils down to this : that since the Commission has passed the order in the matter, it should have given an opportunity of hearing to the parties and the opportunity of hearing given by Sub-Committee of the Commission, was, therefore, otiose. A complete answer to this submission of Dr. Padia is to be found in *Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another*, . In that case, the order was passed by an officer different from the one, who heard the parties. The Supreme Court on the issue of natural justice felt satisfied that no prejudice had been caused to the Manufacturers' Association by any of the circumstances, pointed out. The proceedings were not in the nature of formal judicial hearings. They were in the nature of meetings and full minutes were recorded on all the points discussed at each meeting. It was not brought to the notice of the Supreme Court that any salient point, urged by the Manufacturers' Association had been missed. On the contrary, the order itself summarises and deals with all important objections of the petitioners. In para 6 of the aforesaid decision, the question as to whether the requirement of natural justice can be said to have been complied with where the objections of the parties are heard by one officer, but order is passed by another, came to be discussed. It was submitted before the Supreme Court that it was not necessarily so and that the contents of natural justice will vary with the nature of the enquiry, the object of the proceedings and whether the decision involved is "institutional" decision or one taken by an officer specially empowered to do it. In the present case, the Issue is one of grant of approval by the Commission and not any particular officer statutorily designated. The Subcommittee has thrashed out the matter in all possible details. It has discussed every bit of aspect of the controversy between the parties and after appraisal of the allegations and the counter-allegations and the conduct of the parties, has recommended that it was a case where approval to the proposal of termination of the services of Saraswat could not be given. I have also scrutinised the findings of the Sub-Committee and find that they are in keeping with the facts and circumstances of the case.

19. A short and swift reference may be made to the second point with regard to

the functioning of the Sub-Committee of the Commission. Learned counsel for the petitioner urged that the Commission has no power to appoint a Sub-Committee to look into the matters of punishment, and, therefore, the recommendations made by the Sub-Committee were of no consequence. It appears that the learned counsel has lost sight of the provisions of Regulation 5 of the U. P. Secondary Education Service Commission (Procedure and Conduct of Business) Regulations, 1983. Regulation 5 makes a provision with regard to the convenient transaction of the business of the Commission and the allocation of work amongst the members of the Commission. In sub-clause (2) of Regulation 5, it has been provided that for convenient and expeditious transaction of its business, the Commission may constitute a committee or committees from amongst its members and authorise any member for performance of any specified work or transaction of any specified business. In sub-clause (5) of the said regulation, it is provided that the decisions of the committee shall, except in matters in respect of which the Commission has otherwise directed, be subject to approval of the Commission. This provision, therefore, clearly negates the submission made on behalf of the petitioner that a Sub-Committee of punishment could not be appointed by the Commission. Sri Moti Lal Varma, it is not disputed, was a member of the Commission at the relevant time. He was appointed as one man Sub-Committee of Punishment. The matter of approval or disapproval of the order of termination of Saraswat was assigned to Sri Moti Lal Varma under the authority of Regulation 5. The report submitted by the Sub-Committee (Punishment) was obviously subject to the approval by the Commission and the Commission has accorded the necessary approval in its meeting dated 25.9.1995. There was, therefore, no procedural illegality in scanning the matter by the Sub-Committee of the Commission. Some delegation of power is necessitated keeping in view the exigencies and the circumstances as well as constraints under which the Commission functions. All the matters cannot be taken up by the Commission sitting with all the members jointly and, therefore, as of necessity, work of the Commission is required to be decentralised and distributed amongst its members subject, however, to the final approval of the Commission. Thus, no prejudice has been caused to the petitioner-Committee of Management on the ground of alleged non-observance of principles of natural Justice.

20. This case, viewed in the historical retrospect, one cannot escape from the conclusion that right from the day one, Saraswat who was appointed as Principal on the recommendations of the Commission, was not acceptable to the Management, as Saraswat wanted to act independently and without fetters on his powers as Principal. The Management considered Saraswat as stumbling block in the field of their various undesirable activities, insofar as they related to financial irregularities and squandering of the Boys' funds. A fund which was required to be deposited under the particular head was being enjoyed by the management in its own way and perhaps for personal gains. Saraswat, conscious as he was, deposited the entire amount of the fund under the proper head and

this act of Saraswat irked the management and was the starting point of tussle between the Principal and the management. The Commission came into being to put an end to various malpractices which the management, in general and the Principal, who used to be a stooge of the management in particular, were out to squander the public money for their personal gains and mismanage the whole affairs. The malady could not be remedied by various provisions made under the Intermediate Education Act, 1921 and the Regulations made thereunder. It was for this reason, as has been stated in the statement of object and reasons to U.P. Act No. 5 of 1992 :

"(1) It was felt that the selection of teachers under the provisions of the said Act and the regulations was sometimes not free and fair. Besides, the field of selection was also very much restricted. This adversely affected the availability of suitable teachers and the standard of education. It was, therefore, considered necessary to constitute Secondary Education Service Commission at the State level, to select Principals, Lecturers, Headmasters and L.T. Grade teachers.....

(2) u/s 16G (3) of the Intermediate Education Act, 1921, managements were authorised to Impose punishment with the approval of District Inspector of Schools in matters pertaining to disciplinary action. This provision was found to be Inadequate in cases where the management proposed to impose the punishment of dismissal, removal or reduction in rank and so it was considered necessary that this power should be exercised subject to the prior approval of the Commission or the Selection Boards, as the case may be, which would function as an Independent and impartial body."

21. The present case, thus, is an example of the fact that a Principal selected, recommended and appointed by the Commission, is not accepted by some managements as because of his independent position he is not prepared to toe the line of the management or to connive with them in squandering the public funds. The various charges were levelled against Saraswat with a view to get rid of him and to keep at bay from the chair of Principal which he was to occupy after due selection and appointment by the Commission.

22. In the result, I find that the petitioner-Committee of Management has no case, whatsoever, to challenge the order dated 26.9.1995 passed by the Commission and communicated to the petitioner on 7.10.1995, Annexure-14 to the writ petition or to seek a direction from this Court to prevent Saraswat from functioning on the post of the Principal of the College. Saraswat has now been restored back to the position of Principal and in view of the various documents filed with the counter-affidavit, he is working as such, and has been recognised by the D.I.O.S. and other authorities as Principal of the College. The writ petition, therefore, is liable to be dismissed and in my view, it is a fit case in which Saraswat-respondent No. 3 should be compensated in terms of money -for the harassment, lose of reputation, and mental agony caused by the unwanted hindrances and obstacles put by Sri Satish Chand Bhaiaji, Manager of the College, in the performance of the legitimate duties of Principal by Saraswat. A

sum of Rs. 10,000 (Rupees ten thousand) shall be recoverable by Saraswat-respondent No. 3, which Sri Satish Chand Bhalaji, Manager of the College shall be liable to pay, in his personal capacity, within three months from today.

23. Under the U. P. High School and Intermediate Colleges (Payment of Salaries to Teachers and other Employees) Act, 1971, the liability of making payment of salary of the Principal, teachers and other employees of the colleges is on the State Government and the salaries of the teachers, Principals and other employees are now paid by the State Government. For the last more than five years, the State exchequer has been burdened in making payment of the salary to Saraswat who, for one reason or the other, was not allowed to function as Principal of the College by the management. In sub-section (2) of Section 10 of the Payment of Salaries Act, 1971, it has been provided that the State Government may recover any amount in respect of which any liability is Incurred by it, under sub-section (1) by attachment of the income from the properties belonging to or vested in the institution as if that amount were the arrear of land revenue due from the institution. This provision authorises the State Government to recover the amount paid towards the salary of a teacher and for that matter, of a Principal from the management, if for the default of the management, State Government had to pay salary of the teacher/Principal concerned. There was absolutely no justification for the management (petitioner) in not taking the work from Saraswat as Principal of the College for a considerable long period. Before initiating action u/s 10 (2) of the Act of 1971, it would be necessary for the D.I.O.S. to make an enquiry into the matter and after the conclusion of the enquiry within a period of six months from the date of production of a certified copy of this judgment and order before him, he shall refer the matter to the State Government, for taking action u/s 10 (2) of the Act of 1971. This drastic step is necessary to be taken so that it may act as a deterrent to the other Committees of Management of the Colleges, which act in a recalcitrant and reprehensible manner.

24. In conclusion, the writ petition falls and is dismissed subject to the observations and directions made above.