

(2017) 04 AHC CK 0125
In the Allahabad High Court
Case No : 5347 of 2015

M/s. Rekan Industries Ltd. Thru. Director	APPELLANT
Vs	
State of U.P. Thru. Secy. Small Scale Industry and 4 Ors	RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Constitution of India, Article 14, Article 226 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts to Issue certain writs

Citation : (2017) 04 AHC CK 0125

Hon'ble Judges : Shri Narayan Shukla, Sheo Kumar Singh

Bench : Division Bench

Advocate : Ramesh Kumar Singh, Meenakshi Singh Parihar, Mohit Kumar Singh, Somesh Tripathi, I.P. Singh

Judgement

1. Heard Mr. H.G.S. Parihar, learned Senior Advocate assisted by Ms. Meenakshi Singh Parihar, learned Advocates for the petitioner, learned Chief Standing Counsel for the respondent nos. 1, 2 and 3 as well as Mr. I.P. Singh, learned counsel for the respondent nos. 4 and 5. 2. By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the order dated 22.10.2014, whereby the Commissioner and Director of Industries, Uttar Pradesh, while proceeding with the matter in compliance of the order passed by this Court in Writ Petition No.4435 (M/B) of 1997, and with other writ petitions and after hearing the petitioner regarding supply of substandard items meant to be used for irrigation department, black listed the petitioner's unit for the period of five years. 3. It has been further prayed by the petitioner to issue a direction in the nature of mandamus for directing the opposite party to except the tender of the petitioner against e-tender notice dated 14.05.2015 and to permit the business for supply of PVC Pipes. 4. Briefly stated, the petitioner is in the business of manufacturing of PVC Pipes and has been supplying to various departments of the State Government including Jal Nigam. The record reveals

that the Director of Industries had called a tenders for supply of pipes to be used by the Irrigation Department and in reply to which the petitioner's offer his price for supplying PVC Pipes, after scrutinizing the matter in accordance with the rule, the rate contract was finalized between the petitioner and the Government Agencies and the contract order was issued in favour of the petitioner. While entering into the rate, the Director of Industries had specified the type, quality and specification of PVC Pipes, which was to be supplied by the supplier. The dispute between the petitioner and respondents arose by the result of some specific scientific investigation carried out by the respondent's agencies on the quality of the PVC Pipes, which was supplied by the petitioner and was found to be substandard and against the specification. The petitioner was served with the notice of show cause regarding supply of PVC Pipes lines and after that the petitioner's firm with other firms were black listed against which writ petition mentioned above was filed and it was held that the opportunity of hearing was not provided to the petitioner. Thus, the order of black listing was quashed with liberty to the respondents to proceed with the matter in accordance with law. 5. As per submission of the respondents, the petitioner was served with the notice and was given opportunity of hearing and passed the order impugned blacklisting the petitioner's firm. 6. Learned Chief Standing Counsel has submitted that the contractual matter and the order passed by the respondents in the matter of supply of substandard pipes was based on report submitted by Central Institute of Plastic, Engineering & Technology. 7. It has further been submitted that the action of the respondents cannot be scrutinized by means of the present writ petition. The parameters of the Court's power have been analysed by the Supreme Court in Commissioner of Income-tax, Bombay and Ors., v. Mahindra & Mahindra Ltd. and Ors., AIR 1984 SC 1182. We reproduce paragraph-11 of the said judgment:- "By now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled and it would be redundant to recapitulate the whole catena of decisions of this Court commencing from Barium Chemicals, 1966 Supp SCR 311: (AIR 1967 SC 295) case on the point. Indisputably, it is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same. This Court in one of its later decisions in Smt. Shalini Soni v. Union of India, (1981) 1 SCR 962 : (AIR 1981 SC 431), has observed thus: "It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote". Suffice it to say that the following passage appearing at pages 285-86 in Prof. de Smith's treatise "Judicial Review of Administrative Action" (4th Edn.) succinctly summarises the several principles formulated by the Courts in that behalf thus: "The authority in which a discretion is vested can be

compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations, must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories; failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts *ultra vires*. Nor, is it possible to differentiate with precision the grounds of invalidity contained within each category". 8. In *State of U.P. and Ors. v. Renusagar Power Co. and Ors.*, AIR 1988 SC 1737 it was held that exercise of administrative power will be set aside if there is a manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. 9. The famous "Wednesbury Case" *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.* (1947) 2 All ER 680 (CA) is considered to be the landmark in so far as the basic principles relating to judicial review of administrative or statutory direction are concerned. We quote a passage from the judgment of Lord Greene which is as follows :- "It is true that discretion must be exercised reasonably. Now what does that mean ? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters, which he is bound to consider. He must exclude from his consideration matters, which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority..... . In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another." 10. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* 1984 (3) All ER 935, (commonly known as CCSU case) as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other

members of the European Economic Community. Lord Diplock observed in this case as follows :- "..... Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community." Lord Diplock explained "irrationality" as follows : "By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." 11. In *Union of India and Anr. v. G. Ganayutham* (1997) 7 SCC 463 the Supreme Court after referring to the aforesaid two cases namely *Wednesbury* case and *CCSU* case held as follows :- "We are of the view that even in our country-in cases not involving fundamental freedoms-the role of our courts/tribunals in administrative law is purely secondary and while applying *Wednesbury* and *CCSU* principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the courts and tribunals in our country can only go into the matter, as a secondary reviewing court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of *Wednesbury* and *CCSU* tests. The choice of the options available is for the authority; the court/tribunal cannot substitute its view as to what is reasonable." 12. In *Indian Railway Construction Co. Ltd. v. Ajay Kumar* (2003) 4 SCC 579 the Supreme Court held as follows- "It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary.If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated." 13. In *People's Union for Civil Liberties and Anr. v. Union of India & ors.*, 2004 AIR SCW 379 while dealing with the same issue, the Supreme Court observed as under :- "The jurisdiction of this Court in such matter is very limited. The Court will not normally exercise its power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from mala fide, dishonesty or corrupt practise. The order can be set aside if it is held to be beyond the limits for which the power has been conferred upon the authorities by the Legislature or is based on the grounds extraneous to the legislation and if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction required thereunder." 14. In *State of N.C.T. of Delhi and Anr. v. Sanjeev alias Bittoo* 2005 AIR SCW 1987 the Supreme Court in

paragraphs 16 and 18 held as follows :- "16.....One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality" the second "irrationality" and the third "procedural impropriety"." 18. The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality, and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient." 15. The principles applied in judicial review of administrative decisions relating to acceptance of the terms and conditions set out in the contract have been considered by the Supreme Court in *Tata Cellular v. Union of India* AIR 1996 SC 11 and the same are as follows :- "The principles deducible from the above are : (1) The modern trend points to judicial restraint in administrative action. (2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. (3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible. (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by *mala fides*. (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure." 16. In *Master Marine Services (P) Ltd. v. Hodgkinson (P) Ltd. and Another* (2005) 3 SCC, 138, it was observed as follows : "11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three-Judge Bench in *Tata Cellular v. Union of India* (1994) 6 SCC, 651. It was observed 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. 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 of that power will be struck down. After an exhaustive consideration of a large number of decisions and standard books on Administrative Law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, a fair-play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. 17. In *Sterling Computers Ltd. v. M.N. Publications Ltd.* (1993) 1 SCC 445 it was held as under : "18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process." By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Court have inherent limitations on the scope of any such enquiry. But at the same time the Courts can certainly examine whether "decision making process" was reasonable rational, not arbitrary and violative of Article 14 of the Constitution. 19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract." 18 . In *Raunaq International Ltd. v. I.V.R. Construction Ltd.* (1999 (1) SCC 492) it was held as under :- "the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of ability to deliver the goods or services as per specifications". 19. The law relating to award of contract by State and public sector corporations was discussed in *Air India Ltd. v. Cochin International Airport Ltd.* [2000 (2) SCC 617] and it was held as under :- "the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all

concerned. Even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere". 20. In *M/s. B.S.N. Joshi and Sons Ltd. v. Nair Coal Services Ltd.* AIR 2007 SC 437, while summarizing the scope of judicial review and the interference of superior Courts in the award of contracts, it was observed as under : "67. We are not oblivious of the expansive role of the superior courts on judicial review. 68. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under : (i) If there are essential conditions, the same must be adhered to; (ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully; (iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing; (iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction. 21. While arriving at the aforesaid conclusions, the Court took note of the illustrious case of *Tata Cellular v. Union of India* (1994) 6 SCC 651 wherein at paras 77 and 94, it was noted as follows : "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. 22. 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, Wednesday 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. As a matter of fact in all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention." 23. The principles deducible from the above are: (1) The modern trend points to judicial restraint in administrative

action. (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible. (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides. (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. 24. In Jagdish Mandal v. State of Orissa and Ors. 2006 (14) SCALE, 224, the scope of limited power of judicial review in tender and award of contracts was also lucidly stated in paragraph 19 as follows :- "19. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions : (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone. OR Whether the process adopted or decision made is so arbitrary and irrational that the Court can say: "the decision is such that no responsible authority acting reasonable and in accordance with relevant law could have reached." (ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226. Cases involving

black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action." 25. In the present case, nothing has been shown by the petitioner that there is a case of failure to exercise the discretion or excess or abuse of discretionary power vested to the respondents. Learned counsel for the petitioner has submitted that the opportunity of hearing was not provided to the petitioner before passing the order impugned. 26. On the other hand, learned counsel for the respondents has submitted that the opportunity of hearing was provided by the petitioner. 27. It cannot be doubted that the principles of natural justice cannot be put into a strait-jacket formula and that its application will depend upon the fact situation obtaining therein. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in *K.L. Tripathi v. State Bank of India and Ors.*, AIR 1984 SC 273; *N.K. Prasada v. Government of India and Ors.*, (2004) 6 SCC 299; *State of Punjab v. Jagir Singh*, (2004) 8 SCC 129; *Karnataka SRTC and Anr. v. S.G. Kotturappa and Anr.*, (2005) 3 SCC 409; and in *Viveka Nand Sethi v. Chairman, J&K Bank Ltd.*, (2005) 5 SCC 337. 28. In *Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee*, AIR 1977 SC 965 the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference of the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures. 29. In *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416 the Hon"ble Supreme Court held :- "Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible." 30. It is equally well settled that the principles of natural justice must not be stretched too far and in this connection reference may be made to the decisions of the Supreme Court in *Sohan Lal Gupta & Ors. v. Asha Devi Gupta and Ors.*, (2003) 7 SCC 492; *Mardia Chemicals Ltd. v. Union of India*, AIR 2004 SC 2371 and *Canara Bank v. Debasis Das*, AIR 2003 SC 2041. 31. In *Hira Nath Mishra and Ors. v. The Principal*,

Rajendra Medical College, Ranchi and Anr. AIR 1973 SC 1260, the Hon'ble Supreme Court held that principles of natural justice are not inflexible and may differ in different circumstances. Rules of natural justice cannot remain the same applying to all conditions. 32. The Constitution Bench of the Supreme Court in Managing Director ECIL, Hyderabad v. B. Karunakar, AIR 1994 SC 1074 made reference to its earlier decisions and observed :- "In A.K. Kraipak and Ors. v. Union of India and Ors., AIR 1970 SC 150, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why, they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice." (Emphasis added) 33. The Hon'ble Supreme Court in Bihar School Examination Board v. Subhas Chandra Sinha and Ors., AIR 1970 SC 1269 while considering the cancellation of the entire examination because of use of mass copy considered the scope of the principles of natural justice in such a matter and observed :- "It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go....." 34. After referring to the aforesaid decision, the Supreme Court in Chairman J&K State Board of Education v. Feyaz Ahmed Malik, AIR 2000 SC 1039, emphasised that the Board is entrusted with the duty of proper conduct of examinations. 35. In Biswa Ranjan Sahoo and Ors. v. Sushanta Kumar Dinda & Ors., AIR 1996 SC 2552, the Hon'ble Supreme Court had the occasion to examine whether principles of natural justice were required to be followed in a matter where because of large scale malpractice in the selection process, the selection was cancelled and in this context it was observed :- "Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward

to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment." 36. In *Union of India and Ors. v. O. Chakradhar*, AIR 2002 SC 1119, the Hon"ble Supreme Court considered the question whether it was necessary to issue individual show cause notices to each selected person when the entire selection was cancelled because of widespread and all pervasive irregularities affecting the result of selection and it was observed :- "The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable." 37. In the case of *S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and Ors.*, AIR 1994 SC 853, the Hon"ble Supreme Court refused to interfere on the ground of breach of principles of natural justice by observing that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. 10. Learned counsel for the respondents has further submitted that vide letter dated 18.05.2005, show cause notice was issued to the petitioner's firm, which was based on the report of the committee and it was further directed that the petitioner may peruse the records in the concerned office and again vide letter dated 14.06.2005, 19.12.2007, 22.10.2013, 30.10.2013 and 1.01.2014, the petitioner's firm was communicated and was given opportunity of hearing. The result of the report submitted by the Central Institute of Plastic, Engineering and Technology was communicated to the petitioner's firm vide letter dated 14.06.2005, the Additional Director Industries, Kanpur. There are several communication on the record which reveals the opportunity of hearing was given to the petitioner's firm. Further, it was found by the report of the Central Institute of Plastic, Engineering and Technology that the items, pipes supplied to the Government Department were found to be substandard and, were not according to the specification and no other conclusion is possible according to the report and it is proved on the record that opportunity of hearing was provided to the petitioner's firm. In these circumstances, it would not be said that the principles of natural justice was not observed. 38. It is further to be noted that the Court is to proceed as to whether non-observance of any of the principles enshrined in statutory rules or principles of natural justice have resulted in deflecting the course of justice. Even, if in a given case, like the fact of the present case there may be some deviation but it has not resulted in grave injustice or has not prejudiced the cause of the petitioner because the decision taken by the respondent was based on the scientific report. This Court does not function as a Court of appeal on the finding of scientific report submitted by the experts. On examining the facts and circumstances of the present case, it cannot be held that the process adopted or decision made by the respondents is in anyway arbitrary or irrational or in any way in violation of the principles of natural justice. The conclusion is that the petition is devoid of merit and deserves

to be dismissed. 39. It would be necessary to mention here that special leave to appeal was filed before the Apex Court against the order dated 19.08.1998 passed by this Court in the matter of supply of substandard PVC Pipes, was dismissed vide order dated 11.07.2002 on the following grounds :- " There is an exorbitant delay of 651 days in filing SLP (c) No. 20870/200, 715 days in SLP (c) No. 20872 of 2000, 714 days in SLP (c) No. 20873 of 2000 and 256 days in SLP (c) No. 6020 of 2001 for which no sufficient cause has been shown. The applications for condonation of delay are dismissed. Consequently, the special leave petitions are also dismissed." 40. Similarly, when the Goods/PVC Pipes supplied by the petitioner were not found as per the standard of specification, the Secretary Minor Irrigation Department, by annexing the report of inquiry committee and the expert report communicated to the Directorate for taking action. Thereafter, directions were issued for replacement of below standard pipes and explanation was also sought with regard to supply of below standard pipes, but the same was not replaced due to the reason that the Department had used the goods/pipes. 41. Two important facts came into light, (I) substandard quality of pipes were used by the department causing loss to the State Exchequer and public in general, (II) the special leave to appeal before Hon"ble the Apex Court was intentionally filed in much more delay and in one case, there is a delay of more than 651 days. The Principal Secretary of the concerned department is at liberty to examine these matters and if necessary, inquiry may be initiated against the officer/officials responsible for using substandard quality of pipes and also filing the SLP with such inordinate delay. 42. On the submissions, mentioned above, we are of the considered view that the writ petition is devoid of merits and is liable to be dismissed and is hereby dismissed with costs. Petition Dismissed.