

(2002) 09 DEL CK 0131
In the Delhi High Court
Case No : CWP 4012 of 2002

Shri Jaspal Singh

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 235, 239B
Criminal Procedure Code, 1973 (CrPC) — Section 195
Delhi Lokayukta and Upalokayukta Act, 1995 — Section 10, 11, 12, 13(2), 15(2)
Evidence Act, 1872 — Section 58
Mines Act, 1952 — Section 24
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2002) 09 DEL CK 0131

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : N. Safaya, for the Appellant; V.K. Shali, for R-1 and 5 and Ravinder Balwani, for R-4, for the Respondent

Judgement

S.B. Sinha, C.J.—Recommendations of the Lokayukta dated 14th June 2002 is in question in this writ petition.

2. The petitioner is a member of legislative assembly.

3. On 04.11.2001 the complainant/ respondent No. 4 made a complaint tot he Hon''ble Chief Minister against Shri. H.R. Aggarwal, Chief Engineer (D) West, DVB SE (D) W II and XEN (D) PJB stating that these officials are making transfers after taking money. ON 04.11.2001 the complainant/respondent No.4 made a complaint to the Hon''ble Chief Minister against Shri H.R. Aggarwal, Chief Engineer (D) West, DVB SE (D) W II and XEN (D) PJB stating that these officials are making transfers after taking money and as he could not satisfy the greed of the above mentioned officers, he has been transferred only after 5 months'' time as AE (Zone) 1203 (D) PJB. He further stated that he has been transferred 6 times in 7 years service as Assistant Engineer. He further alleged that the

Chairman, DVB did not give him a hearing. He prayed for action against the guilty officials.

4. On 31.01.2002, the complainant filed two complaints being No.C-7/Lok/2002 and C-8/Lok/2002 before the learned Lokayukta, Delhi stating that the petitioner allegedly demanded money and his refusal to give resulted in his transfer. Complaint No. CV-8, also filed alleging the above mentioned officers had been indulging in corrupt practice in implementing the transfer policy. The charges leveled against him are as follows:-

- (i) corruption in effecting transfers;
- (ii) transfer is done under pressure from political parties;
- (iii) demand of money on monthly payment basis for holding in office;
- (iv) non-payment of electricity charges;
- (v) use of domestic light for commercial purposes.

5. In response to the above complaint, learned Lokayukta issued separate notices on complaints, whereupon they filed their replies denying the above charges. They further contended that the transfers are made bona fide, on account of non-availability of officials in mid-summer when the problems are highest, at the same time to train the new incumbent and without any pressure from political background.

6. On 15.05.02 the learned Lokayukta in his order enumerated the points/allegations and fixed a date for hearing on 29.05.2002. Between the above two dates, learned Lokayukta has been enquiring into the allegations of demand of money, exercise of political pressure and also matter relating to non-payment of electricity charges and house tax pertaining to Mata Balwant Kaur Public School, situated in Mahavir Nagar started by his late father, being run by a registered society. Petitioner being a legal heir to the founder is also a member of the society. Petitioner objected to and challenged the jurisdiction of learned Lokayukta relating to charges of non-payment of electricity.

7. The learned Lokayukta by his order dated 15.05.2002 took suo moto cognizance of the matter relating to non-payment of electricity and house tax of another property of the petitioner situated in J-2/20, Rajouri Garden, New Delhi, in which he resides. The said property is under litigation as the owner of the property being mother of the petitioner left five legal heirs.

8. On 14.06.2002 the learned Lokayukta after hearing the parties issued his report containing recommendations to the competent authority being Lt. Governor, under the Act.

9. Learned counsel for the petitioner contended that the said report is based in violation of can one of natural justice as contained in Section 10 and 11 of the Act and he relied upon the material and evidence which was not in existence on

the date. It was further contended that the witnesses were examined after closing of the case for orders and documents were brought on records without any notice to the parties.

10. On 21.06.2002 petitioner made a representation to the Lt. Governor, stating all the facts and praying for personal hearing whereupon he was given an appointment for 25.06.2002.

11. On 24.06.2002 Lt. Governor issued orders on the basis of the report of the Lokayukta proposing certain action in the matter without waiting till the date of appointment of petitioner for personal submission and hearing.

Hence the petitioner filed present writ petition.

12. By reason of the afore-mentioned report dated 14th June 2002 in relation to the complaint made of the fourth respondent herein, the following conclusion was arrived at by the learned Lokayukta:

"From the findings recorded above, it follows, firstly; Sh. Jaspal Singh, MLA failed to maintain the norms of integrity and conduct which ought to be followed by the public functionary of the class to which he belongs i.e., Member-Legislative Assembly, secondly; Sh. Jaspal Singh, MLA abused his position by putting political pressure for the transfer of Ravinder Balwani from the post of Asst. Engineer and thereby caused undue harm and hardship to Balwani and thirdly; Mr. Jaspal Singh misused his position in making recommendations for retransfer of Raj Kumar, Asst. Engineer with a view to favor Raj Kumar and further his (Jaspal Singh) personal interests."

13. In the afore-mentioned situation, the following recommendations were made:

"(1) The competent authority may in the light of the findings and the conclusion recorded by the Lokayukta take such action as it deems fit and just.

(2) Sh. Jaspal Singh, MLA be required to pay all public dues i.e., property tax dues and electricity dues within four weeks, failing which the concerned authorities shall take coercive steps to realize the outstanding dues.

(3) The injustice done to Ravinder balwani to undone. It is because of the courage shown by Ravinder Balwani in filing the complaint that Delhi Vidyut Board has been able to recover over Rs. 4 lacs from Sh. Jaspal Singh which otherwise they may have never recovered.

(4) The Delhi Vidyut Board pay cost of Rs.10,000/- to Ravinder Balwani within four weeks."

14. However, in relation to suo moto action, the learned Lokayukta although considered the matter in relation to the residence of the petitioner herein situated at J-2/20 Rajouri Garden and upon a finding of fact, the learned Lokayukta recommended a thorough investigation in the matter by CBI or an independent agency apart from the Delhi Vidyut Board, stating:

"41. The Lokayukta finds all the matters (except the one's at the hotel and the wine shop) installed at the residence J-2/20, defective and tampered with. This certainly is not a coincidence. The matter is serious and of grave concern. A thorough investigation into the working and conduct of the officers is required by an investigating agency, independent of the Delhi Vidyut Board. The Lokayukta finds himself handicapped because the civil services do not fall within the purview of the jurisdiction of the Lokayukta. There is a deep nexus between the officers and the consumer. The Lokayukta, on a perusal of the "billing and payment" statements, does not find a single electricity connection (with the exception of electricity connection of Subash Hotel) at J-2/20, which has a clean record of billing and payments. This is regrettably the case of a MLA. There is plenty of material on the record showing the ways and means adopted to benefit the consumer and put the Board to losses. The Lokayukta would recommend that pending investigation, the Meter Reader, Meter Reading Inspector, Jr. Engineer, Asst. Engineer and Asst. finance Officer should be shifted from Distt. Janakpuri, Zone-- 1003, so that an independent and effective inquiry is held. The investigation be handed over to CBI, or any other investigating agency, as the competent authority may deem fit and proper."

15. Mr. Safaya, the learned counsel appearing on behalf of the petitioner would submit that having regard to the provisions contained in Section 17 of The Delhi Lokayukta and Upalokayukta Act 1995 (hereinafter called and referred to for the sake of brevity as "the said Act"), as suo moto action could not have been initiated against the Chairman of the Delhi Vidyut Board, the learned Lokayukta acted illegally and without jurisdiction in clubbing up both the matters together. The learned counsel would contend that whereas the hearing on the first matter was over by 29th May 2002, behind the back of the petitioner, a lot of material was brought on record and several witnesses were examined beginning from 30th May 2002 which were taken into consideration in relation to both the complaints. According to the learned counsel, having regard to the provisions contained in Sections 10 and 11 of the said Act, there cannot be any doubt whatsoever that the principles of natural justice were not required to be complied with, as in the instant case, evidences had been taken by the learned Lokayukta behind his back, and, thus, the impugned order cannot be sustained. It was submitted that having regard to the provisions contained in Section 12 of the said Act, the only power which would be exercised by the Lokayukta was to make recommendations in taking action as regards the office concerned. Whereas by reason of the first part of the said report, purported recommendations had been made; on the purported suo moto action taken by the Lokayukta, a direction for investigation by CBI or other independent agency has been made although admittedly in relation thereto, the learned Lokayukta, could not exercise his jurisdiction u/s 12 of the Act.

16. According to the learned counsel, bias on the part of the learned Lokayukta as regards subject matter of the complaint is evident.

17. In the instant case, according to the learned counsel, although the learned Lokayukta in his reply to the counter-affidavit sought to make a distinction between the complaint made by the respondent No.5 and the suo moto action taken by him, he failed to keep the records thereof distinct and separate and used the material collected in one in the other.

18. In support of his afore-mentioned contention, reliance has been placed on *Amar Nath Chowdhury Vs. Braithwaite and Company Ltd. and Others*, *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.* (2001) 1 SCC 182, *Porter and Anr. v. Magill* [2002] (1) AER 465, *State of Punjab v. V.K. Khanna* (2001) 2 SCC 330 and *Tarlochan Dev Sharma Vs. State of Punjab and Others*, .

19. The learned counsel would contend that having regard to the fact that the power of judicial review of this court is a basic feature of the Constitution of India, by reason of the provisions of the said Act, the same cannot be said to be taken away. In support of the said contention reliance has been placed on *L. Chandra Kumar Vs. Union of India and others*, . The learned counsel would contend that the entire directions of the Lokayukta pursuant to or in furtherance whereof the Lt. Governor has directed making of an investigation in terms whereof a First Information Report has been lodged against the petitioner, must be held to be mala fide inasmuch as the said allegations even if given face value and taken to be correct in its entirety, do not constitute offence. The learned counsel would submit that the direction of the Lt. Governor must also be held to be biased and suffering from total non-application of mind inasmuch as whereas in response to the representations filed by the petitioner, he was given an opportunity of hearing on 25th June 2002. Following the report of the learned Lokayukta, the investigation was directed to be started by an order dated 24th July 2002.

20. Mr. Shali, the learned counsel appearing on behalf of the first and fifth respondents, inter alia, would submit that having regard to Sub-section (2) of Section 15 of the said Act, this court has no jurisdiction to interfere with the recommendations of the Lokayukta. According to the learned counsel, the power of judicial review of this court can be pressed into service only in a case where a great miscarriage of justice has occurred. Re-appeal of evidence, the learned counsel would contend, is not within the domain of this court.

21. The learned counsel would submit that having regard to the Explanation appended to Section 7 of the said Act, the expressions "investigation" and "inquiry" are inter-changeable which would also be evident from the provisions of the Delhi Lokayukta and Upalokayukta (Investigation) Rules, 1998 (hereinafter called and referred to for the sake of brevity as "the said Rules").

Mr. Shali would urge that a bare perusal of the said report would show that the same consist of two parts: one in terms whereof recommendations had been made; and two, only an investigation had been directed. Such a direction, the

learned counsel would contend, would come within the purview of Section 16 of the said Act whereas the recommendations issued must be held to be in terms of the provisions of Section 12 thereof.

22. As regards the direction issued by the first respondent herein to initiate investigation in relation to the matter, the learned counsel would contend that principles of natural justice are not required to be complied with. Our attention has been drawn to the fact that although the Lt. Governor met the petitioner on 25th June 2002, no hearing was given to him in this behalf. It was submitted that an action in terms of the order of 24th June 2002 was passed by the first respondent herein upon taking into consideration not only the report of the learned Lokayukta but also the representation of the petitioner. It was submitted that as in the instant case, a First Information Report has already been lodged, the petitioner may take recourse to such remedy as may be available to him in law.

23. Mr. Shali pointed out that pursuant to and in furtherance of the directions issued by the learned Lokayukta, the petitioner has already paid his electricity bills and as regards action required to be taken against the officers of the Delhi Vidyut Board, it is stated that such process had already been initiated. The fourth respondent herein on whose complaint, the Lokayukta took cognizance and submitted his report, contended that a complaint petition against the Chairman of the Delhi Vidyut Board was permissible having regard to the provisions contained in Section 2(m)(iv) and 2(m)(iv)(4) of the Act. He would submit that the Chairman being an officer of the Delhi Vidyut Board, a complaint in terms of the provisions of the said Act would be maintainable although other I.A.S. officers who did not hold any post within the meaning of Section 2(m) aforementioned, the provisions of the said Act may not be maintainable.

24. Shri Balwani, respondent No.4 appearing in person, would submit that the Chairman in his statement before the Lokayukta had admitted that he was transferred at the instance of the petitioner herein and such an order of transfer, according to him, was illegal. In this connection our attention has also been drawn to a decision of the Lucknow Bench of the Central Administrative Tribunal wherein it has been held that although recommendations by a public servant by a representative of the people as regards transfer of a public servant may not be barred under law, but insistence thereupon by the said authority must be held to be bad in law.

25. Before proceeding to deal with the revival contentions, as noticed hereinbefore, the relevant provisions of the said Act may be noticed which are as under:

"2 Definitions1"-

(b) "Allegation" in relation to a public functionary means by affirmation that such public functionary in capacity as such--

(i) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the public functionaries or the class to which he belongs.

(ii) has abused or misused his position to obtain any gain or favor to him self or to any gain of favor to himself or to any other person or to cause loss or undue barn or hardship to any other person:

(iii) was actuated in the discharge of his functions as such public functionary by improper or corrupt motives or personal interest:

(iv) Allegation of corruption, favor, nepotism or lack of faithfulness.

(v) is or has at any time during the period of his office been in possession pecuniary resources or property disproportionate to his known sources of income whether such pecuniary resources or property are held by the public functionary personally or by any member of his family or by some other person on his behalf:

Explanation--For the purpose of this sub- Clause "family" means husband, wife, sons and unmarried daughters living jointly with him:

(d) "competent authority" in relation to a functionary means--

(A) in the case of --

(i) Chief Minister and Minister, the President.

(ii) A member of the Legislative Assembly, the Lieutenant Governor, or during the period of operation of the order made under Article 239AB of the Constitution, the President.

(m) "Public functionary" means a person who is or has been at any time--

(i) the Chief Minister or a Minister;

(ii) a Member of Legislative Assembly;

(iii) a person having the rank of Minister but shall not include Speaker and Deputy Speaker of the Legislative Assembly:

(iv) a Chairman, Vice chairman or Managing Director or a Member of a Board of Directors (by whatever name they be called) in respect of--

(1) an Apex Co-operative Society or any Co-operative Society constituted or registered under the Delhi Co-operative Societies Act, 1972, which is subject to the control of the Government;

(2) a Government Company within the meaning of Section 617 of the Companies Act, 1956, engaged in connection with the affairs, and is under the control of the Government.

(3) A Local Authority established under any law in relation to Delhi;

Provided that the provisions of this Act shall not be applicable to any authority of

a Local Authority constituted under an enactment relatable to entry No. 18 of the State List of the Seventh Schedule of the Constitution;

(4) a Corporation engaged in connection with the affairs, and under the control, of the Government;

(5) any Commission or body set up by the Government which is owned and controlled by it;

(v) a Member of the Municipal Corporation of Delhi as defined in Clause 2(27) of the Municipal Corporation Act, 1957 (as amended in 1993);

(n) "rule" means a rule made under this Act;"

"4. Lokayukta or Upalokayukta to hold on other office--The Lokayukta or Upalokayukta shall not be a member of Parliament or a member of the Legislative of any State or Union Territory and shall not hold any other office of profit and shall not be connected with any political party or be carrying on any business or practice any profession; and accordingly before he enters upon his office, a person appointed as the Lokayukta or Upalokayukta, as the case may be, shall--

(a) if he is a Member of Parliament or of the Legislative of any State or Union Territory, resign such membership; or

(b) if he holds any office of profit resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practicing any profession, suspend practice of such profession.

7. Matter which may be inquired into by Lokayukta or Upalokayukta--Subject to the provision of this Act, on receiving complaint or other information or suo moto--

(a) The Lokayukta may proceed to inquire into an allegation made against a public functionary in relation to whom either the President or Lieutenant Governor is the Competent authority:

(b) The Upalokayukta may proceed to inquire into an allegation made against any public functionary other than that referred to in Clause (a):

Provided that the Lokayukta may inquire into an allegation made against any public functionary referred to in Clause (b),

Explanation--For the purposes of this section the expressions "may proceed to inquire" and "may inquire" include investigation by any person or agency but at the disposal of the Lokayukta and Upalokayukta in pursuance of Sub-section (2) of Section 13.

10. Procedure in respect of inquiry-- The Lokayukta or Upalokayukta shall, in each case before it, decide the procedure to be followed for making the inquiry and in so doing ensure that the principles of natural justice are satisfied.

11. Applicability of evidence Act and Code of Criminal Procedure --(1) The provisions of the Evidence Act, 1872 (1 of 1872), and the Code of Criminal Procedure, 1973 (2 of 1974), shall as nearly as may be, apply to the procedure of inquiry before Lokayukta or Upalokayukta in the matter of--

(i) summoning and enforcing the attendance of any person and his examination on oath;

(ii) requiring the discovery and production of documents and proof thereof;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or officer;

(v) issuing commissions for examination of witnesses or documents; and such other matters as may be prescribed;

Provided that no proceeding before the Lokayukta or Upalokayukta shall be invalidated only on account of want of formal proof if the principles of natural justice are satisfied.

(2) Any proceedings before the Lokayukta or Upalokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1960 (45 of 1960)

(3) The Lokayukta and Upalokayukta shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

12. Report of Lokayukta and Upalokayukta--(1) If, after inquiry into the allegations, the Lokayukta or an Upalokayukta is satisfied that such allegations is established, he shall, by report in writing, communicate his findings and recommendations along-with the relevant documents, material and other evidence to the competent authority.

(2) The competent authority shall examine the report forwarded to it under Sub-section (1) and intimate, within three months of the date of receipt of the report, the Lokayukta or as the case may be, the Upalokayukta, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukta or the Upalokayukta is satisfied with the action taken or proposed to be taken on his recommendations, he shall close the case under information to the complaint, the public functionary and the competent complaint authority concerned. In any other case, if he considers that the case so deserves, he may make a special report upon the case to the Lieutenant Governor and also inform the complainant concerned.

(4) The Lokayukta and the Upalokayukta shall present annually a consolidated report on the performance of their functions under this Act, to the Lieutenant Governor.

(5) If in any special report under Sub-section (3) or the annual report under Sub-section (4) any adverse comment is made against any public functionary, such report shall also contain the substance of the defense adduced by such public functionary and the comments made there on by or on behalf of the Government or the public authority concerned, as the case may be.

(6) On receipt of a special report under Sub-section (3), or the annual report under Sub- Section (4), the Lieutenant Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the Legislative Assembly.

(7) Subject to the provision of Section 10, the Lokayukta may at his discretion make available from time to time, the substance of cases closed or otherwise disposed of by him, or by an Upalokayukta which may appear to him to be of general public academic or professional interest, in such manner and to such persons as he may deem appropriate.

15. Protection--(1).....

(2) Save and otherwise provided in this Act, no proceedings, decision, order or any report of the Lokayukta or Upalokayukta, as the case may be, including any recommendation made there under shall be liable to be challenged, reviewed, quashed, modified or called in question in any manner whatsoever in any court or tribunal.

16. Lokayukta to make suggestions--

The Lokayukta if in the discharge of his functions under this Act, notices a practice or procedure which in his opinion afforded an opportunity for corruption or maladministration, he may bring to the notice of the Government and may suggest such improvement in the said practice or procedure as he may deem fit."

26. Before proceeding further, we may notice that Rule was issued in this case by an order dated 9th July 2002 having regard to the statements made in para 28 of the writ petition in the following terms:

"28. That the petitioner got the inspection of the record done in the office of the Learned Lokayukta and was completely surprised to find that the learned Lokayukta has examined the witness Shri. N.S. Pandey on 28.05.2002 but this fact about the examination of witness on 28.05.2002 was not made known to the petitioner on the date of hearing i.e. 29.05.2002 nor was the copy of such statement made available to the petitioner. Further, the learned Lokayukta had again examined the same witness on 12.06.2002 and got exhibited certain documents/ inspection report dated 12.06.2002. The learned Lokayukta also had examined another witness Shri. Sukhdev Singh on 30.05.2002 and brought on

record his statement and evidence without notice to the petitioner. In act, in his order dated 29.05.2002, the learned Lokayukta has closed the case for orders inspire of the fact that during the actual hearing, he had desired to hear the matter again in the month of July, 2002. In fact, learned Lokayukta had collected further evidence without notice to the petitioner for supporting the contentions of the complainant.."

27. Learned Lokayukta himself has affirmed a detailed counter-affidavit filed on his behalf. It has been pointed out that the two complaints relate to two different properties: one prescribed as Mata Balwant Kaur Public School, Old Mahavir Nagar, New Delhi and the other property No. J-2/20 Rajouri Garden, New Delhi which is the residence of the petitioner herein. The allegation of the fourth respondent herein against the misuse of electricity by the petitioner relates to school whereas a suo moto action had been taken by the said respondent in relation to the property No. J-2/20 Rajouri Garden. The said respondent has clarified that although one report had been filed but the discussions concerning property No.J-2/20 Rajouri Garden, as contained in paras 34- 51 of the report and for the reasons recorded in paras 40 and 41 thereof, a recommendation was made by the competent authority that the investigation be handed over to CBI or any other investigating agency independent of DVB as the competent authority may deemed fit and proper are absolutely separate and distinct.

Whereas the complaint of Ravinder Balwani was dealt with at pp. 1-21 of the said report and the said respondent upon discussing the allegations, evidence and other material, recorded his findings as noticed supra. It has been pointed that the order was reserved in respect of the school properties on 29th May 2002 which had nothing to do with the property relating to J-2/20 Rajouri Garden. It had been stated that the learned counsel for the petitioner had confined his arguments to the complaints by Ravinder Balwani. It has further been pointed out that not only the petitioner produced no evidence in his defense, he despite grant of opportunity declined to cross-examine the complainant.

28. As regards the enquiry on the suo moto proceedings, it is stated:

"7. It is submitted that the learned Lokayukta has no jurisdiction to inquire into the matter/conduct of a person, who is a member of the judicial services or civil services of the Union and holds a civil post. inspire of the above prohibition contained in Section 18 of the Delhi Lokayukta and Upalokayukta Act, 1995, herein after referred to as the "ACT". The learned Lokayukta also issued notice on separate

complaints against the Chairman by the same complaint, which contained contradictory set of facts. Section 17 of the Act is reproduced hereunder:-

"17. For the removal of doubts--it is hereby declared that nothing in this Act shall be construed to authorize the Lokayukta or Upalokayukta to inquire into an allegation against--

(a) any member of the judicial services, who is under the administrative control of the High Court under Article 235 of the Constitution;

(b) any person, who is a member of civil service of the Union or an All India Service or Civil Service of a State or holds a civil post under the Union or a State in connection with the affairs of Delhi."

29. In response to the statements made in para 28 of the writ petition, the respondent No.2 accepts that he had examine the Complaint Register and also Budh Raj, JE (CW-9) and Shri Sukhdev Singh (CW-10) in charge, Complaint Centre, on 30th May 2002. However, it is stated that the same related to the allegations therein relate to property No. J-2/20 Rajouri Garden.

30. The submission of Mr. Safaya is that Shri P.P. Malhotra, Sr. Advocate along with Shri Vineet Malhotra who had appeared on behalf of the third respondent herein was heard although he had no locus standi in the matter on 4/5th June 2002. However, according to the respondents such arguments were inconsequential inasmuch as they were merely repeat arguments. As regards the evidence adduced, the respondent No.2 states that the same was inconsequential piece of evidence and the said witness merely produced the Complaint Register and certain entries made by Mr. Balwani and Raj Kumar were marked. The respondent No.2 stated that in order to verify the allegations made by the petitioner herein against the said respondent it was necessary to examine the said registers. According to him, the same was an inconsequential piece of evidence and as a result the petitioner had not been prejudiced.

31. It is not in dispute that a complaint was mae by the fourth respondent herein alleged that the petitioner had been making complaints against him to the effect that he would not stay after 5.00 PM to attend to the complaints of the public as a result whereof the pubic was agitating. Contention of respondent No.4 was that although his duty hours were from 9.00AM to 5.00 PM, he normally stayed up to 8.00 PM and it was during his tenure that the electric supply in that area ran beautifully and there was no major problem. In his evidence, Shri Balwani, the respondent No.4 gave three instances where he was present with Shri Jaspal Singh up to 9.00 PM.

32. It is not in dispute that according to the fourth respondent not only complaints were made against him by the petitioner herein but also repeatedly he sought for his transfer and wanted his men to be posted in his place. At his insistence only, he was transferred. The Chairman of Delhi Vidyut Board who was arrayed as respondent No.3 stated:

"As far as I remember it was in the last week of June 2001 that Sh. Jaspal Singh for the first time spoke to me about the work and conduct of Mr. Ravinder Balwani and asked for his transfer, thereafter he spoke to me about 5-6 times complaining about Mr. Ravinder Balwani and requesting for his transfer."

33. The fourth respondent would contend that such transfer was made because

of the insistence of the petitioner herein by flouting the transfer policy to further personal interest of the petitioner. The fourth respondent in his complaint alleged:

"(4) Shri Jaspal Singh MLA being public functionary is barred from interfering in day today working of DVB which is an autonomous body of Delhi Govt. headed by an IAS officer Mr. Jagdish Sagar as Chairman. Mr. Jaspal Singh MLA is supposed to maintain high standards of morality, dignity, decency and values in public life. But I am sorry to say that Mr. Jaspal Singh is engaged in corruption and acting as extra constitutional authority over DVB officials.

(5) Shri. Jaspal Singh MLA with the help of Mr. H.R. Agarwal CED West Mr. B.R. Jethi SED WII and A.C. Nagpal ZEN DPJB is fixing transfer/positing in DVB and making large amounts of money in the process. He is also demanding and taking monthly payment from DVB Engineers.

(6) Vide letter No. Sd/PJB/17/407 dt. 17.05.2001. I had gone to Tilak Nagar Zonal office to take charge of my new assignment from Mr. Rajkumar AE my predecessor. I was not allowed to take charge of Zone 1203 by Mr. Jaspal Singh MLA as he was great friend of Mr. Rajkumar. I was made to run from pillar to post from many days and on 22.05.2001. I met Mr. Jagdish Sagar Chairman DVB and complaint to him. Due to his personal intervention I could join my duties w.e.f 23.05.2001...Annexure "B"

(7) During weekly darbar at the residence of Mr. Mahender Singh Sathi Finance Minister Delhi Govt. Mr. H.R. Agarwal CED West DVB rebuked me and wanted to know from me that why I have still not visited the residence of Mr. Jaspal Singh MLA inspite of my having joined more than one month back. He informed me that Mr. Jaspal Singh is not happy with me and wanting me changed.

(8) Next day when I went to meet him at his residence along with Mr. Bhodraj JE he scolded me in front of my junior. He expressed great displeasure and asked me why I had not come to meet him earlier immediately after my joining as is the practice. He had no courtesy to even offer me a glass of water or seat. There after he started calling me frequently at his residence.

(9) I have no inform you that the politicians have no right to call the Govt. officials at their residence as described above.

(10) Thereafter Mr. Jaspal Singh started appreciating my work but told me firmly that on basis of work only I cannot continue on this lucrative post. He politely demanded monthly payment from me. I expressed my inability to pay. Then he told me that my boss Mr. A.C. Nagpal XEN D PJB was paying him Rs. 20,000/- per month and my junior Engineer Rs. 10,000/- per month. He gave me sometime to think over. I still refused.

(10) Then he started giving me harrowing time. He told me that my days on this seat are numbered. After sometime he informed me that I will be transferred in the month of October which proved to be true.

(11) I allege that Mr. Jaspal Singh MLA has got me transferred as I did not pay any bribe to him and to other senior engineers with whom he has strong nexus."

34. It was alleged that the petitioner had been running Mata Balwant Kaur Public School in Mahavir Nagar and misusing electric supply there.

35. It is only in relation to the said order of transfer of the fourth respondent that submissions had been made.

36. We would deal with the matter relating to Rajouri Garden property a little later.

37. So far as the submission of Mr. Safaya to the effect that principles of natural justice have been violated, there cannot be any doubt whatsoever that examining two witnesses on 30th May 2002 and hearing arguments on 4/5th June 2002 prima facie had resulted in violation of the principles of natural justice.

38. With a view to answering this question, the court has to consider the doctrine of prejudice. The Supreme court in *State Bank of Patiala and others Vs. S.K. Sharma*, referring to *Ridge v. Baldwin* 1964 AC 40 : (1963) 2 AER 66 : (1963) 2 WLR 935, opined:

"28..... There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principles. IN other words, distinction is between "no notice"/ "no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate -- take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin* 1964 AC 40 : (1963) 2 AER 66 : (1963) 2 WLR 935. It would be a case falling under the first category and the order of dismissal would be invalid -- or void, if one chooses to use that expression (*Calvin v. Carr* 1980 AC 574: (1979) 2 AER 440 (1979) 2 WLR 755. But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi Vs. State Bank of India and Others*, it would be a case falling in the latter category -- violation of a face of the said rule of natural justice -- in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct -- in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in *B. Karunakar* (supra) should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e.,

adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone or prejudice as aforesaid."

39. The principles have been summarized in para 33 of the said decision, inter alia, in the following terms:

33. We may summarize the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed of by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/department enquiry in violation of rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted there from, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provision which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defense in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4)

hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee."

40. It is well known that natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the plan 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 (See The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, .

41. The submissions which were made by the learned counsel appearing on behalf of the third respondent herein (since expunged) is that the provisions of the said Act have no application in this case because he happens to be an officer of the IAS cadre. The petitioner accepts the said fact and in the writ petition, has proceeded on the said basis. Thus, the arguments which were advanced on behalf of the third respondent herein either through himself or through his advocate, were to the benefit of the petitioner herein. No prejudice, Therefore, could be caused by reason thereof. So far as examinations of Shri Budh Raj and Shri Sukhdev Singh are concerned, as noticed hereinbefore, they merely produced an official register and proved certain entries to show that on many occasions, at least on some occasion, the respondent No.4 worked beyond his duty hours.

42. It may be that the complaint of the petitioner had been that he does not stay beyond his duty hours but sufficient material has been brought on record by respondent No.4 before the respondent NO.2 that his duty hours was from 9.00 AM to 5.00 PM. The fourth respondent Therefore, was under no obligation to stay beyond 5.00 PM. If he intended to prove that he despite his duty hours being fixed, stayed beyond 5.00 PM, the same was merely an additional circumstances as a result whereof, his case had not been improved vis-a-vis the allegations made against the petitioner herein.

43. Once the respondent No. 4 herein, the complainant examined himself and who had not been cross-examined, the petitioner would be deemed to have admitted the statements made by him before the respondent No. 2. It, Therefore, does not lie in the mouth of the petitioner to contend that he has been prejudiced by reason of violation of principles of natural justice.

44. In K.L. Tripathi Vs. State Bank of India and Others, the Apex Court held:

"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 facts, 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 inevitably form part of fair play in action but where there is no dispute 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 the question of facts there was no dispute, not 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.

33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an Explanation of the facts, absence of opportunity to cross-examination does not create any prejudice in such cases.

34. The principles of natural justice will, Therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his Explanation was asked for. He participated in that investigation. He gave his Explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity of personal hearing. His Explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty. Indeed it may be mentioned that he was really consulted at every stage or preliminary investigation upon which the charges were based and upon which proposed action against him has been taken. In that view of the matter, we are of the opinion, that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principles of natural justice merely because of evidence was not recorded in his presence or that the materials, the gist of which was communicated to him, were not gathered in his presence. As we have set out hereinbefore, indeed he had

accepted the factual basis of the allegations. We have set out hereinbefore in extenso the portions where he had actually admitted the factual basis of these allegations against him, where he has not questioned the veracity of the witness of the facts or credibility of the witnesses or credibility of the entries on records. Indeed he has given Explanation namely, he was over worked, he had consulted his superiors and sought their guidance, his conduct has not actually according to him caused any financial risk or damage to the bank concerned. Therefore, in our opinion, in the manner in which the investigation was carried out as a result of which action has been taken against him cannot be condemned as bad being in violation of the principles of natural justice. Had he, however, denied any of the facts or had questioned the credibility of the persons who had given information against him, then different considerations would have applied and in those circumstances, refusal to give an opportunity to cross-examine the persons giving information against him or to lead evidence on his own part to rebut the facts would have been necessary and denial of such opportunity would have been fatal. But such is not the case here as we have mentioned hereinbefore."

45. If certain things had been admitted, the same need not be proved having regard to the provisions of Section 58 of the Indian Evidence Act. The principles of natural justice have undergone a sea-change. It is now settled that the person alleging violation of natural justice is required to prove that he has been prejudiced by non-compliance thereof. Mere technical violation, which does not cause substantial prejudice, may not be a ground to interfere with an order despite the fact that technically the principles of natural justice have been violated.

46. Principles of natural justice, it is trite, are flexible in nature. In *Khaitan (India) Ltd. and Ors. v. Union of India and Ors.* 2 1992 clt HC 478, the law has been stated in the following terms:

"11. The concept of principles of natural justice has undergone a radical change. It is not in every case, that the High Courts would entertain a writ application only on the ground that violation of principles of natural justice has been alleged. The apex court, in *State Bank of Patiala and others Vs. S.K. Sharma*, has clearly held that a person complaining about the violation of the principles of natural justice must show causation of a prejudice against him by reason of such violation. The apex court has held that the principles of natural justice, may be said to have been violated which require an intervention when not hearing, no opportunity or no notice has been given. Reference in this connection may also be made to *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,*. The question as to the effect of non-grant of enough opportunity to the learned counsel for the appellant by the Commissioner to meet the allegations made in the supplementary affidavit requires investigation. As to what extent the appellant has suffered prejudice would be a question which would fall for a decision of a High Court."

47. It is true that in *Mrs. Maneka Gandhi v. Union of India and Anr., (supra)*, the

Apex Court laid down that the principles of natural justice have to be complied with in the event, the person concerned suffers civil or evil consequences, but the said rule would be applied subject to the "Prejudice Doctrine".

48. The second contention of Mr. Safaya is that the second respondent was biased against him. However, when questioned, Mr. Safaya categorically submitted that his client does not allege any personal bias against the respondent No. 2. He, however, submitted that such bias with regard to subject matter was relating to subject matter of enquiry.

He, in this connection, relied upon *Amar Nath Chowdhary v. Braithwaite and Company Ltd. & Ors.* (supra).

In that case, the court was not concerned with any form of bias referred to therein but observed:

"6. One of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as "*debt esse judex in propria causa*", which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias. Bias may be of different kind and form. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid form of bias. ..."

49. In *State of Punjab v. V.K. Khanna*, (supra), it was held:

"33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings."

50. In *Tarlochan Dev Sharma Vs. State of Punjab and Others*, upon which Mr. Safaya has placed strong reliance, it is observed:

"15. It is interesting to view the present-day bureaucrat-politician relationship

scenario:

"A bureaucratic apparatus is a means of attaining the goals prescribed by the political leaders at the top. Like Alladin's lamp, it serves the interest of whosoever wields it. Those at the helm of affairs exercise apical dominance by dint of their political legitimacy... The Ministers make strategic decision. The officers provide trucks, petrol and drivers. They give march orders. The Minister tells them where to go. The officers have to act upon instructions from above without creating a fuss about it." ("Effectiveness of Bureaucracy", The Indian Journal of Public Administration, April-June 2000, at p. 165)

16. In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. In *Anirudhsinhji Jadeja and another Vs. State of Gujarat*, this Court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this Court in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, are instructive and apposite. Executive Officers may in exercise of their statutory discretion take into account considerations of public policy and in some context, policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instructions by a superior to bind them. As already stated, we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author....."

51. As has been observed by the Supreme Court in that case, we may also observe that in the instant case, the Chairman of the Delhi Vidyut Board for all intent and purport mortgaged his discretion by yielding to the pressure tactics adopted by the petitioner herein. No exception, Therefore, can be taken to the findings of the second respondent in this behalf.

52. We fail to understand how the second respondent can be said to have a bias in relation to a subject matter of the enquiry. A case of bias as regards subject matter could have been made out if had any interest in the subject matter of the lis. As a statutory functionary, the Lokayukta must deal with allegations against public servant. The Members of the Legislative Assemblies come within his

jurisdiction, is not in doubt or in dispute. He, while considering such allegations is entitled to take into consideration all aspects of the matter. The question would have been otherwise had the second respondent not given an opportunity of hearing to the petitioner herein or had not allowed to cross-examine the witness or examine himself and other witnesses in his defense. Such allegations have not been made. In fact, as stands admitted, the petitioner even did not cross-examine the complainant. In such a situation, we are at a loss to understand as to how bias as regards subject matter could be attributed as against the second respondent herein.

53. Natural justice, as is well known, is principally founded on two basic principles, which are (i) audi alteram partem, (ii) Nemo Judex in causa sua.

54. The question came up for consideration before one of us in Coal Mines Officers Association of India and others Vs. Union of India and others, was to whether a person, who was a Member of a rival Union could be appointed as a Member of Enquiry Committee in terms of the provisions of Section 24 of the Mines Act, 1952.

55. The duty to act fairly is the theme of the principles of natural justice. However, the extent of the duty to act fairly will normally be very limited where the authority exercises a function, which does not culminate in a binding decision. The Rule generally applies, at least with full force, only to conduct leading directly to a final act of decision, and not to the making of a preliminary decision or to an investigation designed to obtain information for the purpose of a report or a recommendation on which a subsequent decision may be founded. (See Halsbury's Laws of England , Vol. 1 (i), 4th Edition, paras 85 and 94).

56. Furthermore, the standard of fairness would be different where the proceedings are in inquisitorial form.

57. Broadly bias can be classified under three different heads:-

(a) a legal interests which mean that the Judge is "in such a position that a bias must be assumed.

(b) Pecuniary interest.

(c) Personal bias.

58. Law in this regard has expanded to a great extent. In J.F. Garner's Administrative Law, it is stated:-

"The natural justice "bias" rule looks to external appearances rather than to proof of actual improper exercise of power. If the reasonable observer would have the requisite degree of suspicion of bias in the decision maker then that decision can be challenged. It is a matter of the courts ensuring that "justice is seen to be done". Since successful challenge is based on appearances, it is natural that the types of matter to which the rule applies is somewhat confined. As we shall see it clearly applies to judicial and disciplinary functions but not

generally more widely to administrative decision-making and actions."

59. In *Metropolitan Properties Co. (FGC) Ltd. v. Lannon* 1968 (3) AER 304, Lord Denning MR observed:--

"In considering whether there was a real likelihood of bias; the court does not look at the mind of the justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favor one side at the expense of the other. The court looks at the impression, which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does it, his decision cannot stand; see *R. v. Huggins* (8), *Sunderland Justices* (9), per Vaughan Williams, L.J. Nevertheless, there must appear to be a real likelihood of bias. Sunrise or conjecture is not enough; see *R.V. Camborne Justices, ex parte Pearce* (10); *R.V. Nailsworth Justices, ex parte Bird* (11). There must be circumstances from which a reasonable man would think it likely or probable that the justice, or Chairman, as the case may be, would, or did, favor one side unfairly at the expenses of the other. The court will not enquire whether he did, in fact, favor one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence, and confidence is destroyed when right-minded people go away thinking; "The Judge was biased".

60. However, the learned Judge held:--

"I hold, Therefore, that Mr. John Lannon ought not to have sat on this rent assessment committee. The decision is voidable on that account and should be avoided. Although we are differing from the Divisional Court, I would like to say that we have had a good deal more information than that court had. In particular, we have seen a letter of January 13, 1967 and other things not before them when they gave their rulings. Otherwise I would not have thought it right to interfere".

(Underlining is mine for emphasis)

Danckwerts, L.J. observed:

"Of course, I am not saying that the mere fact that a solicitor had acted for or advised tenants should disqualify him from sitting. But the facts of this case display some lack of appreciation of the rules of conduct by Mr. Lannon, and my conclusion is that it was not wise of Mr. Lannon to act as Chairman of the Committee in the circumstances".

61. The aforementioned passages have been quoted with approved in almost all the Text Books on Administrative Law.

62. De Smith in his *Administrative and Constitutional Law* observed:-

"It would be unreasonable to apply the rules to the performance of formal ministerial acts by officers who, if acting in a judicial capacity, would have been disqualified".

The learned Author further states the law thus:-

"If the main functions of a tribunal are to determine disputed questions of law and fact, and to exercise discretionary powers by reference to standards that are not self-created but explicitly prescribed by statutory or other rules, on the basis of evidence openly tendered, and if, moreover, the abdicators can normally be expected to preserve a detached attitude towards the parties and issues before them, then a "departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator ought not to be and will not be countenanced."

63. The learned Author, however, noticed that the reports and preliminary decisions may nevertheless have a seriously prejudicial effect on the legally protected interests of individuals (e.g. when it is a necessary pre-requisite of a final order). The person making the report or preliminary decision must not be affected by interest or likelihood of bias.

64. The learned Author, however, has also noted a contrary decision in *Barker v. Westmorland C.C.* (1958) 56 LGR 267, where child care order by Magistrate on recommendation of sub-committee, the Chairman of which was (so it was claimed) likely to be biased against father.

65. The Learned Author also noticed:--

"However, the pendulum has now swung towards a test of reasonable suspicion, founded on the apprehensions of a reasonable man who had taken reasonable steps to inform himself of the material facts. "Reasonable suspicion" tests look mainly to outward appearances; "real likelihood" tests focus on the court's own evaluation of the probabilities; but in practice the tests have much in common with one another, and in the vast majority of cases they will lead to the same result. For the courts to retain both tests as alternative methods of approach is unlikely to cause serious uncertainty, and there may be advantages in preserving a measure of flexibility. It would be surprising, surely, if a court were to refuse to set aside a decision on the ground that a reasonable observer could not have discovered facts that subsequently came to light and which indicated to the court that there was a real likelihood of bias in the adjudicator".

With regard to the likelihood of bias, the learned Author observed:-

"But the evidence must be compelling; the courts are relevant to conclude that any judicial officer's judgment is likely to be warped by personal feeling. General expressions of hostility towards a group to which a party belongs (e.g. reachers or motorists) do not disqualify."

The learned author states:--

"Two main classes of cases may arise although they are by no means exhaustive. The first is where an adjudication is associated with a body that institutes or defends the proceedings. The courts have refused to hold that a person is disqualified at common law from sitting to hear a case merely on the ground that he is a member of the public authority, or a member of or subscriber to the voluntary association, that is a party to the proceedings."

It was also stated:--

"in another case, where a single Councillor was alleged to be likely to be biased in connection with a similar application there was a divergence of opinion on the question whether, if the allegations had been made out, the decision of the council would have been automatically tainted."

66. Even in Metropolitan Properties (FGC) Ltd.'s case (supra), Lord Denning MR observed that nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough.

67. In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, , the Supreme Court considered a large number of decisions and observed that the requirement of the natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter i.e. being dealt with and so forth. It further noticed that the doctrine of natural justice cannot be put within the straight-jacket of rigid formula.

68. The Supreme Court further noticed that De Smith in his Judicial Review of Administrative Action at page 262 observed that a real likelihood of bias means at least a substantial possibility of bias. In the fact of the said case, however, the apex Court held that there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the Inquiry Committee, namely, the said Shri Maru Ram but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge and thereafter proceeded with the inquiry proceeding as a member of the Inquiry Committee to uphold the correctness of his deposition as a Judge.

69. In S.A. De Smith's Constitutional and Administrative Law (Second Edition) at page 577 it is observed:--

"Clearly there is scope for the exercise of judicial discretion, given these vague criteria. Take three recent cases. In one, the court reasonably decided that a police medical officer who had already formed an unfavorable opinion of a Chief Inspector's psychiatric condition should be prohibited from examining him again with a view to certifying him as permanently disabled which could lead to compulsory premature retirement. In another, the court held that it was contrary to natural justice for school governors to sit as members of a local education authority's sub-committee which had to decide whether or not to uphold a

decision of the governors (taken at a meeting at which they had not been present) to dismiss a teacher. Yet in a third case, the court refused to interfere with a decision by governors of a teachers' training college to confirm the expulsion of a student (who had a man in her room for some weeks) although they had initiated the disciplinary proceedings themselves." (Ward v. Brad Ford Corporation (1971) 71 LGR 27.

70. In Halsbury's Laws of England (Paragraph 89) it has been held that it is generally unnecessary to establish the presence of actual bias although there have been cases outside the field of strictly judicial proceedings where a less stringent test has been applied.

71. In Wade and Forsyth's Administrative Law at page 485 the learned Authors referred to the case of Ward v. Brad Ford Corporation (Supra) in the following terms:-

"In a contrasting case, where a student at a teaching training college was expelled for having a man living with her in her room, the Court of Appeal upheld the expulsion even though it was effected by the board of governors who had taken it upon themselves to refer the case to the disciplinary committee which recommended expulsion."

72. However, in the said case Hannam v. Brad Ford Corporation's case (Supra) was not referred to.

73. In Halsbury's Laws of England (paragraph 85) the said decision has been quoted in Note 7 stating (see also Ward v. Brad Ford Corporation (1971) 70 LGR 27 CA, "expulsion of student teacher for misconduct; duty to act fairly carried out although disciplinary reference instituted by the deciding body".

74. It may, however, be noticed that this case has also been referred to at page 565 of Wade and Forsyth's Administrative Law (1994 Edn.).

75. It is interesting to note that in paragraph 88 Halsbury's Laws of England 88 it has been stated:-

"It is not enough to show that the person adjudicating holds strong views on the general subject matter in respect of which he is adjudicating, or that he is a member of a Trade Union to which one of the parties belongs where the matter is not one in which a trade dispute is involved." (Stevens v. Stevens (1929) JP 120.

76. It is also pertinent to note that recently in Regina v. Gough, the House of Lords tilted towards the possibility of bias rather than probability of bias. The House of Lords decisively restated the real likelihood tests in a criminal case.

77. In the Gough's case (Supra) at the trial one Mrs. Smith was a member of the Jury. She was recognized by Gough who was attending his brother's trial but he was not tried with him as one of his next-door-neighbour. After the appellant had been sentenced David Gough started shouting and it was at this point that the juror, Mrs. Smith recognized him. The facts were placed before the Judge who

decided that he had no jurisdiction to take any action, the appellant having been convicted. A statement was taken from Mrs. Smith which was verified by affidavit wherein she stated:-

"(1) When she began her service on the jury she did not recognize the name "Gough" as she knew her neighbour as "Steve". Similarly, she knew David's wife as Elaine during the two years that they had been her next door neighbours. (2) The name David Gough was mentioned on a number of occasions during the course of the trial. (3) She had no recollection of ever seeing the appellant before the trial; and had no idea he was the brother of her next door neighbour. (4) On 24 April, 1991 during the trial, prosecution counsel read out a statement which contained the address, 3, Buckley Way Mrs. Smith lives at No. 2 -- and concerned the Capri motor Car." She wondered whether Steve was David Gough but thought it could not be him as he was called Steve. She was confused. (5) The photographs of the appellant and David Gough respectively were shown to the jury during the trial of the appellant. They were police photographs colloquially known as "mug shots". Mrs. Smith did not recognize David. (6) The fact that David Gough was her neighbour did not influence her thinking as a juror and she did not mention the matter to her fellow members of the jury".

78. The House of Lords referred to various decisions and dismissed the appeal stating the law thus:-

"That test was applied in *Reg. v. Mulvihill* (1990) 1 WLR 438, when a Judge tried a robbery case where the loser was a bank in which he held shares, the court distinguishing between the role of the Judge and the jury. The Topping test, if one can use that abbreviation, was also applied in *Reg. v. Morris (orse. Williams)* (1990) 93 Cri. AR 102, by this court. During a trial on indictment for theft from Marks and Spencer Plc. It emerged that one of the jurors was an employee of that organisation though working at a different branch. In quashing the conviction the court held that the Judge when asked to discharge the juror had not gone into the question of "the appearance of bias".

It was observed:-

"It is difficult to discover any basis on which these two lines of authority can live together. Mr. Moran has submitted that a distinction can be drawn between the test to be applied in jury cases and that, which is appropriate for magistrates' courts or other inferior tribunals entrusted with fact-finding responsibilities. We feel we must accept this distinction because there is no other way of reconciling most of the authorities, though it is difficult to understand why the test of bias should be any different in considering the position of a magistrate compared with that of juror. The only case, which cannot be fitted into this dichotomy, is the one last cited, namely *Reg. v. Morris (orse. Williams)*, in which giving the judgment of the court I applied the Topping test, (1983) 1 WLR 119, to the position of a juror. The decision in *Reg. v. Morris (orse. Williams)* 93 C A R 102, cannot stand with that of the five judge court in *Reg. v. Box* (1964) 1 QB 430, and having regard to

the decision of the House of Lords in *Reg. v. Spencer* (1987) AC 128, *Reg. v. Morris* (or *se. Williams*) (Supra) should not be followed to the extent that it applies the Topping test to trials on indictment.

79. However, we may notice that in *Porter and Anr. v. Magil*, (supra), Lord Hope, J. observed:

"103. I respectfully suggest that your Lordships should now approve the modest adjustment of the test in *R. v. Gough* set out in that paragraph. It expresses in clear and simple language a test which is in harmony with the objective test which the Strasbourg court applies when it is considering whether the circumstances give rise to a reasonable apprehension of bias. It removes any possible conflict with the test which is now applied in most Commonwealth countries and in Scotland. I would however delete from it the reference to "a real danger". Those words no longer serve a useful purpose here, and they are not used in the jurisprudence of the Strasbourg court. The question is whether the fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the tribunal was biased."

80. It is not necessary to multiply decisions on the aforementioned points as the matter has also recently been considered by the Supreme Court in *Bhajan Lal, Chief Minister, Haryana Vs. Jindal Strips Ltd. and Others*, . In the aforementioned decision the Supreme Court was considering bias on the part of S.S. Sodhi, J. of Punjab and Haryana High Court (as his Lordship then was). The Apex Court considered various decisions and held that hardly there is any ground to have a reasonable suspicion of bias in that case, stating:-

"It is in the light of this the matter will have to be examined. So done, we hardly find any ground to hold that there could be a reasonable suspicion of bias in this case. That is evident from the facts. The case was in the list of the Bench headed by S.S. Sodhi, J. from 3-8-92 to 21-10-92. No objection was raised. Arguments were advanced for three days on the main writ petition. The application for transfer was taken out on the ground of alleged bias. By then the matter was coming to a close. It cannot be said that there could be any reasonable apprehension of bias, which a reasonable person could entertain, as rightly urged by Mr. Shanti Bhushan. It appears the attempt was to avoid the Bench headed by S.S. Sodhi, J".

81. In *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.* AIR 2001 SC 24, the Apex Court upon survey of various decisions held:-

"31. The Court of Appeal judgment in *Locabail* 2000 QB 451 (supra) though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient."

82. Furthermore, we may notice, however, that in *The Regional Manager and Another Vs. Pawan Kumar Dubey*, it was held:-

"15. We repeat that, before any such case of "malice in law" can be accepted, the person who alleges it must satisfactorily establish it on proved or admitted facts as it was in *Kulkarni's* case. Where the allegations are of malice in fact, which are generally seriously disputed and the case cannot be satisfactorily decided without a detailed adduction of evidence or cross-examination of witnesses, courts will leave the party aggrieved to an ordinary civil suit. This rule, relating to exercise of discretionary powers under Article 226, is also well settled."

83. In *State of Punjab v. V.K. Khanna and Ors.* AIR 2001 SC 343, the Apex Court held:-

"6. In *Girija Shankar Pant's* case air 2000 SCW 3826 (supra) this Court having regard to the changing structure of the society stated that the modernization of the society with the passage of time, has its due impact on the concept of bias as well. Tracing the test of real likelihood and reasonable suspicion, reliance was placed in the decision in the case of *Parthasarthy S. Parthasarthy Vs. State of Andhra Pradesh*, wherein Mathew, J. observed:

"16. The tests of "real likelihood and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression, which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R. in *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Ors. etc.* (1968) 3 WLR 694 . We should not, however, be understood to deny that the Court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings."

7. Incidentally, Lord Thankerton in *Franklin v. Minister of Town and Country Planning* 1948 AC 87 opined that the word "bias" is to denote a departure from the standing of even-handed justice. *Girja Shanker's* case AIR 2000 SCW 3826 (supra) further noted the different note sounded by the English Courts in the manner following:-

"27. Recently however, the English Courts have sounded a different note, though

may not be substantial but the automatic disqualification theory rule stands to some extent diluted. The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. the House of Lords in the case of *Reg. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte* (No. 2) 2000 (1) AC 119 observed:

".....In evil litigation the matters in issue will normally have an economic impact; Therefore a judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much if the Judge's decision will lead to the promotion of a cause in which the Judge is involved together with one of the parties."

Lord Broxton -- Wilkinson at page 136 of the report stated:

"It is important not to overstate what is being decided. It was suggested in argument that a decision setting aside the order of 25 November, 1998 would lead to a position where judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that, because of such involvement, a judge would be disqualified. That is not correct. The facts of this present case are exceptional. The critical elements are (1) that A.I. was a party to the appeal; (2) that A.I. was joined in order to argue for a particular result; (3) the judge was a director of a charity closely allied to A.I. and sharing, in this respect, A.I.'s objects. Only in cases where a judge is taking an active role as trustee or director of a charity, which is closely allied to and acting with a party to the litigation should a judge normally be concerned either to rescue himself or disclose the position to the parties. However, there may well be other exceptional cases in which judge would be well advised to disclose a possible interest."

Lord Hutton also in *Pinochet's* case (*supra*) observed:

"there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation."

28. Incidentally in *Locabail (Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.* 2000 QB 451, the Court of Appeal upon a detail analysis of the oft cited decision in *Reg. v. Gough* (1993) AC 646 together with the *Dimes* case. 3 House of Lords Cases 759) : *Pinochet* case (2000) (1) AC 119 (*supra*), Australian High Court's decision in the case of *Re. J.R.L. Ex Parte C.J.L.*:" 1986 (161) CLR 342 as also the Federal Court in *Re Ebner* 1999 (161) ALR 557 and on the decision of the Constitutional Court of South Africa in *President of the Republic of South Africa v. South African Rugby Football Union* 1999 (4) SA 147 stated that it would be rather dangerous and futile to attempt to define or list the factors which may or not may give rise to a real danger of bias. The Court of Appeal continued to the

effect that everything will depend upon facts which may include the nature of the issue to be decided. It further observed:

"By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakuta v. Kelly* (1989) 167 CLR 568; or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commenced adversely on a party witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favor of recusal. We repeat, every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be."

29. The Court of Appeal judgment in *Locabail* 2000 QB 451 (*supra*) though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case -- a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient."

8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn there from. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.

9. It is in the same vein this Court termed it as reasonable likelihood of bias in *Rattan Lal Sharma's* case *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari*

Ram (Co-education) Higher Secondary School and others, wherein this court was pleased to observe that the test is real likelihood of bias even if such bias was, in fact, the direct cause. In Rattan Lal Sharma's case (supra) real likelihood of bias has been attributed a meaning to the effect that there must be at least a substantial possibility of bias in order to render an administrative action invalid. Rattan Lal Sharma's case (supra) thus, in fact, has not expressed any opinion which runs counter to that in Girja Shankar's case AIR 2000 SCW 3826 (supra) and the decision in the last noted case thus follows the earlier judgment in Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, even though not specifically noticed therein.

84. Yet again in State of Punjab, etc. v. V.K. Khanna and Ors. 2001 (3) SLJ 402, the Apex Court held:-

"7. The test, Therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn there from. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained; If on the other hand, allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the bias Therefore would not arise."

85. Applying the aforementioned principles, we are of the opinion that it cannot be said to be a case where bias or likelihood of bias can be attributed.

86. The aforementioned question has also been considered by this Bench in Brig. R.P. Singh, VSM v. Union of India, CWP 1248/2002 decided on 28th May 2002 and Gurbachan Singh Sawhney v. Union of India and Ors., CWP 5878/1998 decided on 31st May 2002.

87. However, in relation to suo moto proceedings initiated by respondent No. 2 in respect of the house property No. J-2/20 Rajori Garden, the second respondent could not make any recommendation. He rightly or wrongly came to the conclusion that in relation thereto, he could not make an effective enquiry. If he could not make an effective enquiry, he had no jurisdiction to make any recommendation. His finding having regard to the fact that he himself felt handicapped because the civil services do not fall within the purview of jurisdiction of Lokayukta, should not have made any recommendations whatsoever. The tenor of his recommendations do not partake to the character of suggestion as contained in Section 16 of the Act. The said provision operates in absolutely a different field.

88. We, Therefore, are of the opinion that the same does not partake to the character of the recommendations. In the afore-mentioned situation, if any action is required to be taken by the Lt. Governor, the same must be done on his application of independent mind. However, we do not intend to say anything further in this regard inasmuch as if the petitioner herein is aggrieved by any

action taken pursuant to or in furtherance thereof, he may take recourse to such remedies as are available to him in law.

89. Submission of Mr. Safaya to the effect that by reason of amalgamation of two proceedings, the petitioner has been prejudiced, cannot be accepted. It is true that the respondent No. 2 himself at one place of his affidavit has proceeded on the basis that the petitioner is not prejudiced thereby but from his report, it appears that the statements made in the other parts of his affidavit to the effect that he had dealt with the matter separately and the subject matter of both the proceedings were distinct and separate, was correct.

90. We are further of the opinion that this court in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot go into the question as to whether the criminal case initiated against the petitioner was maintainable or not.

91. Mr. Safaya has called upon us to embark upon an enquiry as to whether a case for extraction of electrical energy as contemplated under the provisions of the India Electricity Act, 1910 has been made out. We are afraid that in these proceedings, the said question cannot be gone into. We may, however, observe that the remedy of the petitioner would be to take recourse to such remedy as is available to him in law. We rest our observations at that.

92. Before we part with this case, however, we would like to observe that the contention of the respondents to the effect that this court has no jurisdiction to interfere with the report of the respondent No. 2 is rejected. The respondent No. 2 is a statutory authority. This court has the power of judicial review over the said authority.

93. In *L. Chandra Kumar v. Union of India and Ors.*, (supra), it was observed that the judicial review is a basic feature of the constitution of India and even by making a provision in the Constitution, such a power cannot be taken away.

94. This writ petition is, Therefore, disposed of with the afore-mentioned observations. But in the facts and circumstances of this case, there shall be no order as to costs.