

(1996) 05 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 1316 of 1991

Sri Raghunath Singh and Others

APPELLANT

Vs

The State of Bihar Ors.

RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Banking Regulation Act, 1949 — Section 45
Bihar Private Educational Institutions (Taking Over) Act, 1987 — Section 3(3), 5, 5(2), 5(3)
Bihar Private Engineering College (Taking Over) Third Ordinance, 1990 — Section 5, 5(3), 5(3)
Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Amendment Act, 1962 — Section 4
Constitution of India, 1950 — Article 14, 141, 16, 16(1), 19

Citation : (1996) 2 PLJR 20

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Praksah Shrivastava, Pravin Kumar and Bhupal Krishna Prasad, in 1316, 1405, 1406, 1455, 1852, 2241, 2265 of 1991, Ganesh Prasad Singh, Mithilesh Kumar Roy, Bishun Kant Dubey, in 1475 of 1991, Shyama Prasad Mukherjee and A. Siddiqui, in 1516 and 1562 of 1991, Rajendra Prasad Singh, Manoj Priyadarshi, Sanjay Kumar Singh and Sunil Kumar Singh, in 1172, 1852 and 3680 of 1991, Ram Chandra Jha and Santosh Kumar Jha, in 1288 and 1527 of 1991 and Ravi Shankar Prasad, in 3984 of 1991, for the Appellant; S.A. Narain, Yugal Kishore, S. Raza Ahmad, S. Qaisar Hasan and Birendra Narayan Sharma, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—All these matters were heard together as common question of law is involved in all these cases. There are some factual differences in respect of the matters in question but those are not material for the purpose of the judgment which has been delivered in this case. As the basic question of law is the same, all these matters are disposed of by this common judgment.

2. The subject matter of challenge in these writ petitions are orders of termination of services of the Petitioners under the provisions of Sub-section (3) of Section 5 of the Bihar Private Engineering College (Taking Over) Third Ordinance, 1990 (hereinafter referred to as the said Ordinance). The broad grounds on which the orders of termination have been passed in this batch of writ petitions are summarized as follows:

(i) In some cases services of the Petitioners have been terminated on the ground that the Petitioners are overage. (ii) In some cases the services of the Petitioners have been terminated on the ground that they are surplus. (iii) In some cases the services of the Petitioners have been terminated on the ground that they are not qualified, (iv) In some cases services of the Petitioners have been terminated on the ground that their names, so appointed, were inserted after the announcement of take over of the Colleges in question by the State Government, (v) In some cases the services of the Petitioners have been terminated on the ground that the persons concerned are qualified in subjects which are not taught in Engineering Colleges. But in none of the cases the persons concerned whose services have been terminated were ever given any opportunity of hearing.

3. There is Anr. aspect of the matter also, in most of the writ petitions it has been contended that at present there are sufficient vacancies in the taken over Colleges to accommodate all the Petitioners. This is also a factual position and decision on this can only be made if an opportunity of hearing is afforded to the Petitioners.

4. The facts of the case as averred in C.W.J.C. No. 1316 of 1991 are as follows:

Pursuant to an advertisement dated 11th June, 1981 some of the Petitioners applied for being appointed in the Indian College of Engineering, Motihari and were ultimately appointed on the basis of a selection process. The designation and date of joining of the Petitioners have been given in paragraph 10 of the writ petition. The Petitioners' case is that they were appointed validly by the Governing Body of the said College.

5. Sometime in the year 1986 an Ordinance was promulgated which was known as Bihar Private Engineering College (Taking Over) Ordinance, 1986. As a result of the said Taking Over Ordinance, the Indian College of Engineering, Motihari was taken over by the State Government on 9th December, 1986. As a legal consequence of such take over the teaching and non-teaching staff of the Colleges thus taken over were allowed to continue in their services on ad hoc basis on the condition that they would be absorbed after scrutiny by the Screening Committee to be set up under the Ordinance.

6. The Petitioners thus started working on ad hoc basis in terms of the Ordinance of 1986. After taking over of the said College under the aforesaid Ordinance, on 14th April, 1987, a screening committee was constituted and the screening committee was directed to give report within ten days. Ultimately the screening committee submitted a report dated 15th September, 1987 stating therein that

out of 273 employees, 250 employees were appointed after due selection process and the District Magistrate found after scrutiny that the appointment of the Petitioners are valid and genuine. Thereafter the District Magistrate continued further scrutiny of the employees and on perusal of the report of the screening committee the District Magistrate submitted a supplementary list of twenty one employees on 12th January, 1988 in which the appointment of twenty one employees was found genuine and in accordance with law.

7. It is the case of the Petitioners that on the basis of the report of the screening committee the District Magistrate released the salary of the Petitioners and the State Government was pleased to release the salary of two hundred and seventy one employees. The Petitioners' case is that suddenly their salary was stopped and therefore, some of the employees preferred a writ petition before this Court which was registered as C.W.J.C. No. 7074 of 1990. There is an averment in paragraph 20 of C.W.J.C. No. 1316 of 1991 that the same is still pending.

8. Then a further Ordinance was promulgated which is known as Bihar Private Engineering College (Taking Over) Second Ordinance, 1987. The second Ordinance was introduced with the purpose of providing facilities for technical education and to establish and run Engineering Institutions in a particular area of the State. As a result of the second Ordinance also those three Private Engineering Colleges were taken over, namely, Indian Engineering College, Motihari, Jagannath Mishra Institute of Technology, Darbhanga and Maaadh Engineering College, Gaya.

8. As a result of the said taking over under the aforesaid Second Ordinance similar consequences ensued and all the persons employed in the said Colleges ceased to be the employees of the private College and became Government employees on ad hoc basis. The Petitioners, however, have contended that their service conditions were governed by the previous Ordinance of 1986 and not by the subsequent Ordinance of 1987.

9. Then came the third Ordinance, named as the Bihar Private Engineering College (Taking Over) Third Ordinance, 1990. The said Ordinance became an Act subsequently and was numbered as Act No. 4 of 1991. The provisions of Section 5 of the Third Ordinance, 1990 and the provisions of Section 5 of the Second Ordinance of 1987 are identically the same.

10. The case of the Petitioners is that they are all confirmed employees serving on the permanent posts which were created by the Managing Committee of the Engineering Colleges in which they were appointed and at the time of appointment it would appear that the maximum age limit was 35 years and the age of the Petitioners was condoned.

11. The Petitioners, therefore, have challenged that the impugned orders dated 31st January, 1991 passed by Respondent No. 2 in purported exercise of power under Sub-section (3) of Section 5 of the said 3rd Ordinance are illegal and without jurisdiction.

12. In the further affidavit filed by the Respondents in C.W.J.C. No. 1316 of 1991, the case which has been made out is that the State took over three Private Engineering Colleges, namely, (i) Indian College of Engineering, Motihari, (ii) Jagannath Mishra Institute of Technology, Darbhanga and (iii) Magadh Engineering College, Gaya on 9th December, 1986 by virtue of the Ordinance of 1986. It is further stated that the Ordinances were promulgated from time to time and it has now been converted into all Act, being Act No. 4 of 1991. The case of the Respondents is that the State Government constituted a Committee of experts and knowledgeable persons, namely, the Joint Secretary, Department of Science and Technology as the Chairman, all the concerned District Magistrates of the districts in which the Institutions are located and three Professors of Government Engineering Colleges as members of the said Committee. According to the stand taken in the said counter affidavit, such committee was constituted vide Government Resolution No. 1063 dated 24th July, 1987 u/s 5(2) of the Ordinance. The stand of the Respondents is that such committee examined the appointments, and promotions given by the Managing Committee in respect of three Private Engineering Colleges and verified all the relevant papers regarding each member of the Staff. The said screening committee found the Petitioners over age and did not find them fit for absorption in service. In the counter affidavit it has also been stated that there is nothing known as the first screening committee or the second screening committee. There was only one screening committee for teaching and non-teaching staff. It is further stated in the counter affidavit that under the Ordinance there was no provision for giving an opportunity of showing cause before passing the order of termination and, therefore, no opportunity was given to the Petitioners before the order of termination was passed by Respondent No. 2 on the recommendations of the screening committee which are all valid and legally sustainable.

13. Various points have been urged before this Court by the learned Counsel for the Petitioners but this Court is of the view that this writ petition is to be decided on a single question, namely, whether before termination of the services of the Petitioners by the State Government in exercise of its powers under the said Ordinance, it was incumbent upon the Respondents to give the Petitioners an opportunity to present their case.

14. There are broadly speaking, two phases of this question. The first phase is whether the requirement of giving the Petitioners an opportunity to present their case flows from the provisions of Sub-section (3) of Section 5 of the said Ordinance under which the impugned orders have been passed and the second phase is whether such an opportunity, even if it is not tacit under Sub-section (3) of Section 5 of the Ordinance, is a part of the inbuilt content of Article 14 of the Constitution of India which within its sweep envelopes fair play as a facet of the doctrine of audi alteram partem.

15. Since the entire question turns on the interpretation of Sub-section (3) of

Section 5 of the said Ordinance, the text of the same is set out below:

The State Government on receipt of report of the Committee or Committees, as the case may be, shall determine the strength of teaching and other categories of employees and the staffing pattern and shall decide in respect of each member of the Teaching and other categories of employees on the merit of each case whether to absorb him in Government service or to terminate his service or to allow him to continue on ad-hoc basis for a fixed term or on contract and shall where necessary redetermine the rank, pay, allowances and other conditions of service.

16. For the proper interpretation of the said Sub-section this Court is of the view that it must proceed on a basic and fundamental aspect of the matter that a person's employment is the source of his/her livelihood. It may be that there are certain irregularities in the matter of employment of the. Petitioners. It may be that in these Colleges which have been taken over, there are more employees than what is required but even then the Court must see whether the manner and mode of termination of services of the Petitioners is fair, just and proper.

17. When employment of a person is put to an end and he/she is thrown out of his/her bread and especially when it is done at the instance of the State, the procedure for such deprivation must be one which is just, reasonable and fair. It is not enough that any procedure laid down by law will always meet the requirement of fairness and the Court is a dumb spectator to such an exercise of statutory power. When the law laying down the procedure does not in so many words spell out or, ensure fairness in the exercise of statutory power, the Court, in exercise of its power of judicial scrutiny over such exercise of power may "iron out the creases" in the procedure and read it down or read into it the requirement of fairness which will save it from the vice of un-reasonableness. A law which is unreasonable, is un-constitutional also. Our Apex Court has repeatedly said that reasonableness is itself the golden thread which runs through the entire fabric of the constitutional scheme.

18. In the judgment of *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , the Apex Court after referring to other judgments of the Supreme Court explained the concept of reasonableness in the following words in page 2000 of the report-

The interaction of Articles 14, 19 and 21 analyzed by this Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, clearly demonstrates that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the Directive principles. It has been laid down by this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Maneka Gandhi's case (supra)* that Article 14

strikes at arbitrariness in State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality of non-arbitrariness, is projected by this article, it must characterize every governmental action whether it be under the authority of law or in exercise of executive power without making of law.

(emphasis added)

19. In *Kasturilal (supra)* the Apex Court further emphasized on the aforesaid "principles of reasonableness and non-arbitrariness in governmental action which lies at the root of core of our entire constitutional scheme and structure".

20. While summing up the content of a citizen's right under Articles 14 and 16 in the context of termination of service by the Government, it was observed by the Supreme Court in the judgment of *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, as follows:

The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomized in Articles 14 and 16(1).

21. In the present case, this Court is of the view that before, taking a decision under Sub-section (3) of Section 5 of the Ordinance, "on the merit of each case" on the basis of the report of the Committee set up under Sub-section (2) of Section 5 of the Ordinance, it is incumbent on the part of the State Government to give the Petitioners an opportunity to present their case especially when it decides to terminate the services of an employee. Fair play in administrative action demands that appreciation of "the merit of each case" for termination cannot be made by the State Government on the basis of a one-side consideration alone and without allowing the Petitioners any participation in the process. Such a procedure is inherently un-fair and the Court will read it down in order to save it from the attack of being opposed to the principles of Article 14 of the Constitution. Thus the Court will read into it a requirement of the observance of the principles of natural justice.

22. It is obvious that termination of service of an employee will visit him with "civil consequences". In such cases the authority terminating the services of the petitioned is not merely acting administratively but is acting definitely in a quasi-judicial capacity inasmuch as it decides a "list", namely, the right of the Petitioners to be absorbed in the services which they have been discharge for years together.

23. What the Court should do in such a situation and what should be its line of enquiry? These questions have been answered authoritatively in the epoch making decision of the Constitution Bench of the Supreme Court in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . In paragraph 58 of the report, the following guideline has been given:

The inquiry must, therefore, always be : does fairness in action demand that an

opportunity to be heard should be given to the person affected?

About what effort the Court must make to read the requirement of observing the "audi alteram partem" rule in such a situation, Justice Bhagwati (as His Lordship then was) while delivering the leading judgment observed as follows in paragraph 62, pages 629-630 of the report:

The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice" is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modification. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

(emphasis added)

Having regard to the aforesaid legal principles, this Court holds it must interpret Sub-section (3) of Section 5 of the Ordinance consistent with principles of natural justice. The same principle was applied in Smt. Maneka Gandhi (supra) in construing the provisions of Passport Act, 1967. In paragraph 56, page 624-625 of the report in Maneka Gandhi (supra) this revealing passage occurs:

Now, it is true that there is no express provision in the Passport Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question, if the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J: in *Coopar v. Wandsworth Board of Works* (1863) 14 C.B.N.S. 180; "A Tona course of decisions, beginning with *Dr. Bontel's* case (1723) 1 STR. 557 and ending with some very recent cases, establish that although there are no positive words in the statutes requiring that the party shall be heard yet the justice of common law will supply the omission of the legislature". The principle of audi alteram partem which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

(emphasis added)

24. Subsequently the Constitution Bench judgment of the Supreme Court in *Tulsi Ram Patel's* case reported in AIR 1985 S.C. page 1416 held that principles of natural justice are included within the guaranteed rights under Article 14 and an order passed in violation of the principles of natural justice also constitutes an infraction of the guarantee of Article 14. Reference in this connection may be made to a rather recent decision of the Supreme Court in the case of *D.K. Yadav Vs. J.M.A. Industries Ltd.*, . In the said judgment the concept of "civil consequences" has been explained to mean not only the infraction of mere property or personal right but also of civil liberties, material deprivation and non-

pecuniary damages. In other words it has been said "every thing that affects a citizen in his civil life inflicts a "civil consequence". Civil right has been explained to mean rights "capable of being enforced or redressed in a civil action". Therefore referring to the celebrated decision of the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, the Court held that an administrative order which involves civil consequences must be passed consistently with the rules of natural justice.

25. It goes without saying that an order of termination passed against the Petitioners under Sub-section (3) of Section 5 of the said Act would definitely visit the persons concerned with civil consequences. In paragraph 9 of the said judgment. In the case of *D.K. Yadav (supra)* it has been said "an order involving civil consequences must be consistently with the rules of natural justice". In the said judgment the apex court held that the duty to give a reasonable opportunity of being heard will be implied from the nature of the function to be performed by the Authority which has the power to take punitive or damaging action. In this context the apex court was pleased to lay down in paragraph 10 of the judgment in *D.K. Yadav (supra)* the following propositions:

In *Maneka Gandhi v. Union of India* Anr. Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The test have to be pragmatic otherwise they would cease to be reasonable. The procedure .prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act In a manner which is patently impartial and meets the requirements of natural justice.

(emphasis added)

The said concept has been further elaborated in paragraphs 11 and 12 in *D.K. Yadav (supra)* which are set out below:

11. The law must therefore, be now taken to be well settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the

requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the color and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defense. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

In paragraph 13 in D.K. Yadav (supra) the following observation has been made:

Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of natural justice.

(emphasis added)

In paragraph 14 in D.K. Yadav (supra) following observation has been made:

The order of termination of the service of an employee/workman visits with civil, consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice.

26. Here, of course, there is no question of holding a domestic Inquiry before passing the order of termination. The entire gamut of procedure in the domestic enquiry cannot be held nor is it contemplated in Sub-section (3) of Section 5 of the said Ordinance.

27. It is well known that principles of natural justice are not cast in a strait jacket formula but they admit of situational fluidity and adjustment. So here a detailed hearing and enquiry is not contemplated but what is contemplated in accordance

with a fair procedure is giving the affected person an opportunity to record his or her say in the matter before the services are terminated. This is a requirement under Article 14 of the Constitution of India.

28. This Court holds that in the instant case the principles of natural justice must be followed while acting under Sub-section (3) of the said Ordinance for the following reasons:

(i) Sub-section (3) of Section 5 of the said Ordinance does not show that there is any requirement of immediate urgency in the decision making process. The Sub-section contemplates consideration of each case separately "on the merit of each case". So no plea of promptitude can be advanced to defeat a claim of a minimum hearing. Hearing is thus not excluded by necessary implication.

(ii) There is no requirement of recording of reasons before passing an order under Sub-section (3) of Section 3 of the Ordinance so as to provide an "alternative safeguard" to the application of principles of natural justice. There is thus no safeguard which operates as a check to the passing of an arbitrary order.

(iii) There is no provision of either a post decisional hearing against an order under Sub-section (3) of Section 5 of the said Ordinance.

(iv) Similarly there is no provision for appeal.

29. In the context of the aforesaid statutory dispensation under Sub-section (3) of Section 5 of the said Ordinance, this Court holds that the principles of natural justice are neither expressly excluded nor are they excluded by necessary implication. So in this situation if principles of natural justice are not observed in its bare, minimal requirement the procedure for termination of service becomes un-just, un-fair and unreasonable. So in order to save Its constitutionality it must be read down by reading into it the requirement of observing the principles of natural justice.

30. Here reading down the provisions of Sub-section (3) of Section 5 of the said Ordinance in the aforesaid manner is possible inasmuch as the Sub-section, without excluding in express words the requirement of natural justice, is just silent about it. As explained above, there is no exclusion of hearing even by necessary implication.

31. The doctrine of reading down as a mode of statutory interpretation has been followed by the Supreme Court in a number of cases. In the case of Jagdish Pandey Vs. The Chancellor University of Bihar and Another, in a situation which was somewhat akin to the present one the validity of Section 4 of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Amendment Act, 1962 was challenged as being violative of Article 14 of the Constitution. Repelling the said challenge, the Supreme Court observed as follows in paragraph 8 at page 357 of the report:

We have therefore, no hesitation in reading down the section and hold that it

only authorizes the Chancellor to Scrutinize appointments, dismissal etc. made between these two dates for the purpose of satisfying himself that these appointments, dismissals etc., were In accordance with the University Act and the Statutes, Ordinances, Regulations or Rules made there under, both as to the substantive and procedural aspects thereof. If the appointments etc. were in accordance with the University Act etc., the Chancellor would uphold them, and if they were not, the Chancellor would pass such orders as he deemed fit. Read down this way, Section 4 does not confer uncanalised power on the Chancellor; as such it is not liable to be struck down as discriminatory under Article 14.

(emphasis added)

32. The Supreme Court after reading down Section 4 in the aforesaid manner also read into it the requirement of hearing the teacher concerned by the Commission before it can make the recommendation. The following observation in paragraph 9 at page 357 in Jagdish Pandey (supra) are very pertinent:

Now Section 4 provides that the Chancellor will pass an order on the recommendation of the Commission. It seems to us reasonable to hold that the Commission before making the recommendation would hear the teacher concerned, according to the rules of natural justice. This to our mind is implicit in the section when it provides that the Commission has to make a recommendation, to the Chancellor on which the Chancellor will pass necessary orders. If an order is passed u/s 4 even though on the recommendation of the Commission but without complying with the principles of natural justice that order would be bad and liable to be struck down as was done by the Patna High Court in Ram Kripalu Mishra Vs. University of Bihar and Others, . But we have no difficulty in reading Section 4 as requiring that the Commission before it makes its recommendation must hear the teacher concerned according to principles of natural justice.

(emphasis added)

33. In an almost similar situation, the Supreme Court, in the case of K.I. Shephard and Ors. v. Union of India and Ors. reported in AIR 1988 S.C. page 686 held that the principles of natural justice are applicable where pursuant to a scheme of amalgamation some employees are thrown out of employment on the basis of the orders passed by the Reserve Bank of India Authority. Such scheme was framed u/s 45 of the Banking Regulation Act. It was argued before the Supreme Court that since there is no requirement under the scheme to give an opportunity of hearing and since in view of the time frame indicated in the scheme such a hearing is excluded, the employees who have been omitted under the Scheme cannot complain of violation of principles of natural justice. In dealing with the said contention the Supreme Court spoke through Hon"ble Mr. Justice Ranganath Mishra (as His Lordship then was) In the following illuminating words in paragraph 15 at page 695:

Fair play is a part of the public policy and is a guarantee for justice to citizens. In

our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalized so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.

(emphasis added)

34. The said principle is also attracted in the facts of the present case.

35. The attention of this Court was also drawn to Anr. judgment of the Supreme Court in the case of L.N. Mishra Institute of Economic Development and Social Change Patna and Another Vs. State of Bihar and Others, . Dealing with similar provisions in the said case in considering The Bihar Private Educational Institutions (Taking Over) Act, 1987 the Hon'ble Judges of the Supreme Court affirmed the previous decision of the Supreme Court in the case of K.I. Shephard (supra) and held that the termination of services of Dr. Jha, a member of non-teaching staff cannot be made without giving him a reasonable opportunity of being heard. In the said decision in L.N. Mishra Institute of E.D. and Social Change (supra) the Supreme Court had no occasion to construe the provisions of Sub-paragraph (3) of Paragraph 6 of the the Taking Over Ordinance inasmuch as the impugned action of termination of the services of Dr. Jha was made under Sub-paragraph (4) of Paragraph 6 of the said Ordinance. Therefore, the passing observation made about Sub-paragraph (3) of Paragraph 6 of the said Ordinance are of no relevance and do not form part of the ratio decidendi in the said case. There was no argument on the interpretation of Sub-paragraph (3) of Paragraph 6 of the Ordinance. The same was not in issue. Therefore, any observation on the same is not a part of the ratio decidendi of the case. Kindly see the observation of the Supreme Court in the case of Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, . This aspect has been very lucidly stated in Constitution Bench judgment of 11 Judges In the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, in the following words in paragraph 138 at page 578 of the report:

It is difficult to regard a word, a clause or a sentence occurring in a judgment of

this Court divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.

36. Learned Counsel for the Respondents has relied upon a Division Bench judgment of this Court in the case of *Sadanand Jha and others Vs. The State of Bihar and others*, . While delivering the said decision orders of termination passed in respect of some employees under the same Ordinance were also the subject matter of challenge in the said decision. But in the said decision the only point on which the learned Counsel for the Petitioner of that case assailed the order of termination was that the decision was taken without determination of the staffing pattern. The Court while considering the said argument up-held the orders of termination. The present question which is considered by this Court was never argued and never fell for consideration before the Court. In fact, Sub-section (3) of Section 5 of the said Ordinance was not examined in that case.

37. Therefore, for the reasons aforementioned the said judgment is not an authority on the proposition which is considered by this Court here. This Court, therefore, does not feel bound by the Division Bench judgment of this Court in the said case of *Sadanand Jha* (supra) which was given completely on a different point.

38. Various factual questions could have been urged by the Petitioners if a hearing was even accorded to them before terminating their services. Contentions have been raised in the writ petitions that the orders of termination are not in accordance with the screening committee's report. It has also been stated that termination orders have been passed before the report is submitted by the screening committee. It has also been argued that the termination orders are not in accordance with the staffing pattern as per the norms of All India Council of Technical Education. All these questions are relevant for the purpose of coming to a decision whether an order of termination or an order of absorption is to be passed about an employee on consideration of the merit of his case. Decision on these questions should not be arrived at on a one-sided appraisal of facts.

39. Therefore, passing an order without allowing the person affected any opportunity of hearing is manifestly unjust and the entire exercise of power thus becomes an arbitrary exercise which falls foul of Article 14.

40. Therefore, judging from all points of view, this Court holds that a hearing before the final decision of termination taken under Sub-section (3) of Section 5 of the Ordinance is a must in these matters.

41. For the reasons aforesaid and in view of the various pronouncements of law by the Supreme Court relating to the extension of the principles of natural justice in a similar situation and which are binding on this Court under Article 141 of the Constitution, this Court holds that the action of the Respondents in terminating the services of the Petitioners in accordance with the provisions of Sub-section (3) of Section 5 of the said Ordinance without following the minimum

requirement of principles of natural justice is wholly un-sustainable in law and as such the orders of termination are quashed.

42. These writ petitions are accordingly allowed. The impugned orders of termination of services of the Petitioners are, therefore, set aside. The Respondents authorities will now give to each of the Petitioners an opportunity of hearing within a period of four months from the date of receipt/production of a copy of this judgment and thereupon take a decision under Sub-section (3) of Section 5 of the said Act. The Petitioners, however, are not immediately reinstated in service but their reinstatement in service will depend upon the result of the decision by the governmental authorities which will be taken after giving the employees concerned an opportunity of hearing. If, on hearing being given to them, the Respondents authorities are of the view that these Petitioners should be absorbed in service, such decision must follow. It is, however, made clear that if the Respondents authorities do not complete the aforesaid exercise of hearing within the period aforesaid, in that case the Petitioners will be entitled to be reinstated in service upon the expiry of the aforesaid period of four months. On such reinstatement the Petitioners will not, however, be entitled to the payment of back wages but their continuity in service must be maintained.

43. With the aforesaid direction/observation, all these writ petitions are allowed to the extent indicated above. There will be no order as to cost.