
(2014) 04 TP CK 0001
In the Tripura High Court
Case No : W.A. Nos. 01, 02 and 03 of 2014

Usha Barua and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Constitution of India, 1950 — Article 105, 136, 194, 226, 227 — Tripura Panchayats Act, 1993 - Section 128, 16, 23, 4, 76

Citation : (2014) 04 TP CK 0001

Hon'ble Judges : Deepak Gupta, C.J.; S. Talapatra, J.

Bench : Division Bench

Advocate : S. Deb, Sr. Advocate, B. Debnath and S. Datta, for the Appellant; A.K. Bhowmik, Senior Advocate, A.S. Lodh, Addl. G.A., J. Majumder and R. Datta, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J.?These three appeals are being disposed of by a common judgment since the issues involved are the same and they all arise out of one judgment of a learned Single Judge of this Court delivered in WP(C) 287 of 2012, WP(C) 408 of 2012, WP(C) 409 of 2012 and WP(C) 446 of 2012 dated 10-01-2014 whereby he dismissed the writ petitions filed by the present petitioners (appellants herein).

2. The undisputed facts are that the appellants herein were elected as members of Fatikroy Gram Panchayat as members of the Indian National Congress (for short, INC). At the time when the election took place, out of the 12 (twelve) members elected to the Gram Panchayat, 8(eight) including the appellants belonged to the INC and 4(four) belonged to the Communist Party of India (Marxist) [for short, CPI(M)]. Thereafter, Suprava Nag and Subhash Datta of the INC (private respondent Nos. 7 and 6 respectively) were elected as Pradhan and Upa-Pradhan of the Panchayat.

3. On 19th March, 2012, 4(four) members of the Panchayat issued a notice

under the Tripura Panchayats (Election of Office Bearers) Rules, 1994 (for short, Rules of 1994) expressing no confidence against the Pradhan and Upa-Pradhan of the Panchayat on various charges. The District Panchayat Officer on receipt of the said notice convened two meetings of the Panchayat on 07-04-2012 for consideration of the no confidence motion against the Pradhan and the Upa-Pradhan. These meetings were fixed at 11 a.m. and 1 p.m. respectively. The Panchayat Extension Officer, Kumarghat was directed to preside over the meetings. On 05-04-2012, the District Panchayat Officer received two Whips whereby every member of the Panchayat elected as candidate of INC was directed to cast vote against the no confidence motions. The District Panchayat Officer thereafter sent a letter on 05-04-2012 to the Panchayat Extension Officer along with the Whips requesting him to bring those Whips to the notice of the members of the Fatikroy Gram Panchayat belonging to the INC.

4. It is not disputed that meetings to consider the no confidence motions were conducted and in these meetings the petitioners voted in favour of the motion, i.e. against the Pradhan and Upa-Pradhan who were also members of the INC. It is alleged that the Panchayat Extension Officer before conducting the meeting had read out the Whip(s) in the meeting(s) of the Panchayat. He had also obtained the signatures of the members on the reverse of the Whip, but the appellants herein who belonged to the INC had refused to put their signatures on the Whips. Thereafter, the no confidence motion was put to vote and the four members of the CPI(M) and the three appellants voted in favour of the motion and the no confidence motion was accordingly carried.

5. Thereafter, the Panchayat Extension Officer recorded the minutes of the meeting, obtained the signatures of all the 12 (twelve) members and forwarded a report to the District Panchayat Officer and in this report he prayed that action be taken against the appellants Smti. Usha Barua, Sri Ratan Roy and Smti. Sikha Das who had voted in favour of the motion in defiance of the Whip issued by their party (INC).

6. After considering the report of the Panchayat Extension Officer, the Block Development Officer, Kumarghat (hereinafter referred to as the BDO) vide the order dated 14-05-2012 declared the appellants to be disqualified from membership of the Panchayat since they had violated sub-section (2) of section 16 of the Tripura Panchayats Act, 1993 (for short, Act of 1993) inasmuch as they had cast their vote in favour of the no confidence motions in defiance of the Whips.

7. Aggrieved by the said order, the three appellants filed three writ petitions which have all been rejected by the common judgment. Hence, these appeals.

8. The learned Single Judge held that the Whips had been served upon the appellants since the Panchayat Extension Officer had stated on affidavit that he had read over the Whips to all the members including the petitioners before the no confidence motions were put to vote. He also tried to obtain the signatures of

all the members. Other than the three appellants, all other members signed on the reverse of the Whips which shows that the Whips were served. The learned Single Judge held that the rules of natural justice were not attracted in the present case. In coming to this conclusion, the learned Single Judge held that the provisions of section 16 were enacted to curb the menace of defection. It was also held that in a democracy anti-defection laws are safety valves for protection of democracy and since these provisions have been introduced to prevent horse trading of democratically elected public representatives, they should be strictly implemented, otherwise horse trading may increase.

9. We have heard Sri Sankar Deb, learned Sr. Counsel for the appellants, and Shri A.K. Bhowmik, learned Sr. Counsel appearing for the private respondents belonging to the INC, Ms. A.S. Lodh, learned Addl. G.A. for the State and Mr. J. Majumder, learned counsel for some of the private respondents belonging to the CPI(M).

10. The main questions which arise for decision in this case are:-

- (i) Whether, the Whips had been duly served upon the appellants; and,
- (ii) Whether, the impugned orders passed by the BDO are illegal being violative of the principles of natural justice.

11. At this stage, it may be relevant to refer to section 16 of the Tripura Panchayats Act, 1993 which reads as follows:-

"SECTION-16.

16.(1) A member of a Gram Panchayat belonging to any political party shall be disqualified for being a member of the Gram Panchayat--

- (a) if he has voluntarily given up his membership of such political party; or
- (b) if he votes or abstains from voting in the Gram Panchayat contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining in either case, the prior written permission of such political party, persons or authority and such voting or abstention has not been condoned by such political party, person or authority within thirty days from the date of such voting or abstention.

EXPLANATION: For the purpose of this sub-section, a member of a Gram Panchayat shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member.

(2) A member of a Gram Panchayat who has been elected as such, otherwise than as a candidate set up by any political party, shall be disqualified for being a member of the Gram Panchayat if he joins any political party after such election.

NOTE: For the purpose of this Section, "political party" means a political party which has been recognized by the Election Commission of India as a national party or as a state party of this State.

(3) If any question arises as to whether a member of a Gram Panchayat has become subject to disqualification under this Section, the question shall be referred for decision of the Block Development Officer having jurisdiction over such Gram Panchayat and his decision shall be final.

(4) The proceeding under sub-section (3) shall be completed and decision thereon shall be communicated within fifteen days from the date when any such question has been referred.

(5) During pendency of a proceeding, no decision shall be taken by the Gram Panchayat in any meeting for the removal or election of the Pradhan or the Upa-Pradhan.

(6) The disqualification under this Section shall take effect from the date of the decision of the Block Development Officer."

12. Reference may also be made to Rule 27 of the Tripura Panchayats (Election of Office Bearers) Rules, 1994 which reads as follows:-

"RULE-27.

27. Procedure to deal with question regarding disqualification on ground of defection:

(1) In any meeting of a Gram Panchayat, or a Panchayat Samiti or a Zilla Parishad, where vote is taken for election or for any other purpose, the Presiding Officer shall, if his attention is drawn that any member has voted or abstained from voting contrary to the direction of the political party to which he belongs and thereby has earned disqualification under Section 16, or Section 76, or Section-128, record the facts in the Remarks Column of the record of proceedings of the meeting, obtain clarification from such member and then refer the question to the Block Development Officer or, as the case may be, the District Magistrate having jurisdiction for decision in Form 6A, or 12A or 17A as the case may be.

(2) If the Gram Panchayat or a Panchayat Samity or a Zilla Parishad received a written information from a political party or from a member that the member has voluntarily given up the membership of the party or the member having been elected otherwise then as a member of political party has joined the political party, the Pradhan or Upa-Pradhan in case of Gram Panchayat, the Chairman or Vice chairman in case of Panchayat Samiti or Sabhadhipati or Sahakari Sabhadhipati in case of Zilla Parishad shall refer the question to the Block Development Officer or, as the case may be, the District Magistrate to decide whether such member has earned disqualification under Section 16, or Section 76, or Section 128 in Form 6A, 12A or 17A as the case may be.

(3) Every such member who is alleged to have earned disqualification by reason of voting or abstained from voting contrary to the direction of his political party, may submit letter or prior permission or condonation to the Block Development

Officer or, as the case may be, the District Magistrate having jurisdiction within thirty days from the date of voting and such authority shall take up the question of disqualification only after expiry of the said period of thirty days and decide the same within fifteen days from the expiry of the said period of thirty days.

(4) If the authority, as aforesaid, is satisfied on the basis of the report of the Presiding Officer and after making such enquiry as he may consider necessary that any such member has become disqualified under Section 16 or, as the case may be, Section 76 or Section 128, record his decision, communicate it to the Gram Panchayat concerned, or as the case may be, the Panchayat Samiti or the Zilla Parishad and make declaration in Form 6B, or 12B, or 17B as the case may be, that the member has ceased to be the member of that Gram Panchayat or, as the case may be, the Panchayat Samity or the Zilla Parishad."

13. The provisions of the Act and the Rules are similar to the 10th Schedule which was appended to the Constitution by the 52nd amendment to the Constitution. Undoubtedly, the 10th Schedule was brought into the Constitution to deal with the evil of political defection which it was felt would undermine the foundation of democracy. Section 16 of the Act is modeled after the 10th Schedule, especially para-2 and 5 thereof. It would, therefore, be worthwhile to refer to two judgments of the Apex Court wherein the Apex Court has dealt with the purport of the 10th Schedule.

14. A Constitution Bench of the Apex Court in *Kihoto Hollohan Vs. Zachillhu and Others*, upheld the constitutional validity of the 10th Schedule of the Constitution. While upholding the constitutional validity, the Apex Court held as follows:-

"49. Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct -whose awkward erosion and grotesque manifestations have been the bane of the times - above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end....." are constitutional. (See *Katzenbach v. Morgan* (1966) 384 US 641).

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53. Accordingly we hold:

"that the Paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected Members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

The contention that the provisions of the Tenth Schedule, even with the exclusion of Paragraph 7, violate the basic structure of the Constitution in that they affect the democratic rights of elected Members and, therefore, of the principles of Parliamentary democracy is unsound and is rejected."

15. With regard to the exercise of the power of judicial review vested in the superior Courts, the Apex Court held as follows:-

"95. In the present case, the power to decide disputed disqualification under Paragraph 6(1) is preeminently of a judicial complexion.

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100. By these well known and accepted tests of what constitute a Tribunal, the Speaker or the Chairman, acting under paragraph 6(1) of the Tenth Schedule is a Tribunal.

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111. That paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned."

16. Reference may also be made to the judgment of the Apex Court in Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others, wherein the Apex Court again reiterated what was said in Kihoto Hollohan's case.

17. Coming to the first issue, the question is whether the Whips were served upon the appellants or not. The appellants for reasons best known to them have not impleaded the INC as a party in the writ petitions. Therefore, the INC had no opportunity to rebut the allegation of the petitioners that the Whips were not served upon them. Neither the INC nor Md. Badrujjaman who issued the Whips on behalf of the INC have been arrayed as respondents. Therefore, we are of the considered view that it does not lie in the mouth of the petitioners to allege that

no Whip was served upon them. The dispute whether a Whip was served or not is essentially a dispute between the party which issued the Whip and the member of that party who is alleged to have defied the Whip. In case, the member alleges that no Whip was served upon him, he must array the party and/or the authorized representative of the party who issued the Whip as a respondent in the case. Otherwise there will be none to contest the allegations of the petitioners. The State Government, its officials or the private respondents would have no personal knowledge as to whether the Whip, if any, sent by the Party was served on the member or not.

18. Even otherwise, in the present case, we are of the considered view that the learned Single Judge was absolutely right in holding that the Whips had been read out to the appellants before the no confidence motions were put to vote. In this regard, reference may be made to the letter of the District Panchayat Officer written to the Panchayat Extension Officer who was to preside over these two meetings dated 05-04-2012 in which he had enclosed the two Whips issued by Md. Badrujjaman and had asked the Panchayat Extension Officer to bring these to the notice of the members of the Fatikroy Gram Panchayat belonging to the INC. The Panchayat Extension Officer has in his report clearly stated that he read out the Whips and that he tried to obtain the signatures of the appellants on the reverse of the Whips, but to no avail. The signatures of all the other members of the INC are there on the reverse of the Whips. It is, therefore, apparent that the Whips were read out before the motions were put to vote. The other five members of the INC had signed the reverse of the Whips, but not the appellants. We are, therefore, clearly of the opinion that the appellants had knowledge of the Whips and the same were brought to their notice by the Presiding Officer and, therefore, they cannot claim that they did not have any knowledge of the Whips.

19. The more serious question raised before us is that the BDO passed the impugned order without giving any notice or hearing to the appellants. It is alleged that there has been total violation of the rules of natural justice and as such, the impugned order is liable to be set aside.

20. Reliance was mainly placed by the learned counsel for the appellants on the judgment of the Apex Court in Jagjit Singh Vs. State of Haryana and Others, . The learned Single Judge held that keeping in view the provisions of the anti-defection law, the non-compliance with the rules of natural justice was not fatal. The learned Single Judge went on to hold that even if notice had been issued to the petitioners, they could not have added anything more and, therefore, the issuance of notice would be an exercise in futility. Dealing with Jagjit Singh's case (supra), the learned Single Judge after quoting the relevant portion of the judgment in Jagjit Singh's case held as follows:-

"33. The fact of Jagjit Singh (supra) is on a different context. Here the petitioners could not show violation of any Rules for which, a conclusion could be arrived that principles of natural justice were not followed. The ratio of decision of Jagjit Singh (supra) therefore, cannot be applied in the facts of the present

case."

21. With due respect, we are not at all in agreement with the aforesaid observation of the learned Single Judge. In Jagjit Singh's case, the Apex Court was dealing with a matter where the Speaker of the Haryana Legislative Assembly had disqualified Jagjit Singh and others from being members of the Assembly. One of the grounds raised was that there had been violation of the rules of natural justice. It would be pertinent to mention that in Jagjit Singh's case, notices were issued by the Speaker to the petitioners. They filed replies to the notices. These legislators had given interviews on various TV channels. In these interviews, the petitioners who were elected as members to the Haryana Legislative Assembly as independents had admitted that they had joined the Congress party. The Speaker asked them to watch the video recordings and point out whether the video recordings had been doctored or not. The petitioners refused to watch the video recordings. These video recordings had been certified by the television channels and handed over to one Sri Ashwani Kumar who was authorized representative of the complainant. Sri Ashwani Kumar placed on record his affidavit that he had handed over the original CDs to the petitioners. Despite grant of opportunity, the petitioners declined to watch the recorded interview. It was in this background that the Apex Court held that non-grant of opportunity to cross-examine Ashwani Kumar did not amount to violation of the rules of natural justice. It would be pertinent to mention that the Apex Court held that in case the petitioners had availed of the opportunity of watching the video recording and pointing out how the recording was not correct and if then they had not been permitted to lead evidence or cross-examine Sri Ashwani Kumar, there would have been considerable weight in their argument that the principles of natural justice had been violated.

22. The Apex Court in this case held as follows:-

"11. The Speaker, while exercising power to disqualify Members, acts as a Tribunal and though validity of the orders thus passed can be questioned in the writ jurisdiction of this Court or High Courts, the scope of judicial review is limited as laid down by the Constitution Bench in *Kihoto Hollohan Vs. Zachillhu and Others*, . The orders can be challenged on the ground of ultra vires or mala fides or having been made in colourable exercise of power based on extraneous and irrelevant considerations. The order would be a nullity if rules of natural justice are violated.

12. The requirement to comply with the principles of natural justice is also recognized in rules made by the Speaker in exercise of powers conferred by paragraph 8 of the Tenth Schedule. The Speaker, Haryana Legislative Assembly, made the Haryana Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 in exercise of power conferred by paragraph 8 of the Tenth Schedule. Rule 7(7), inter alia, provides that neither the Speaker nor the Committee shall come to any finding that a Member has become subject to disqualification under the Tenth Schedule without affording a reasonable

opportunity to such member to represent his case and to be heard in person.

13. The question whether reasonable opportunity has been provided or not cannot be put in a straitjacket and would depend on the fact situation of each case.

14. At the outset, we may mention that while considering the plea of violation of principles of natural justice, it is necessary to bear in mind that the proceedings under the Tenth Schedule are not comparable to either a trial in a court of law or departmental proceedings for disciplinary action against an employee. But the proceedings here are against an elected representative of the people and the judge holds the independent high office of a Speaker. The scope of judicial review in respect of proceedings before such Tribunal is limited. We may hasten to add that howsoever limited may be the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated. The yardstick to judge the grievance that reasonable opportunity has not been afforded would, however, be different. Further, if the view taken by the Tribunal is a reasonable one, the Court would decline to strike down an order on the ground that another view is more reasonable. The Tribunal can draw an inference from the conduct of a Member, of course, depending upon the facts of the case and totality of the circumstances."

(emphasis supplied)

23. An analysis of the aforesaid portion of the judgment of the Apex Court makes it absolutely clear that the Apex Court has held that the Speaker while exercising powers vested in him under the 10th Schedule acts as a Tribunal and his orders are subject to the writ jurisdiction of the Court. The Apex Court also held that the orders of the Speaker would be a nullity if rules of natural justice are violated. True it is, that the Apex Court held that the rules of natural justice cannot be put in a straitjacket and that would have to be decided on the facts of each case.

24. We are clearly of the view that Jagjit Singh's case clearly lays down that any action for disqualification of elected member can be taken only after following the principles of natural justice.

25. Here we would like to note a submission made by Sri A.K. Bhowmik, learned Sr. Counsel, that this Court should not read anything into the statute which is not there and in this regard, he has made reference to the judgment of the Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, of the judgment reads as follows:-

"23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant."

26. It is contended by Sri Bhowmik, learned Sr. Counsel, that neither Section 16 nor Rule 23 contemplates the issuance of any notice and, therefore, there is no requirement of issuing notice by the BDO before taking any action. Sri Bhowmik has also drawn our attention to sub-section (4) of section 16 which directs that the proceedings should be completed within fifteen days and contends that this itself shows that no notice is required. He has also referred to various other provisions of the Act including section 23 wherein there is specific reference to issuance of notice before action can be taken. It is, therefore, contended that the intention of the legislature was very clear that the principles of natural justice were not required to be followed.

27. We are unable to accept such contention. We live in a country where the Constitution is supreme and the golden thread of the rule of law runs through the Constitution and every action has to be in consonance with the principles of the rule of law. If the rule of law is to prevail, then natural justice must be read into every law which will affect the rights of an individual. Any action which adversely affects the rights of an individual must be taken in accordance with the principles of natural justice even if there be no explicit requirement for issuance of notice. *Audi alteram partem* is one of the main facets of the rules of natural justice. No man should be condemned unheard.

28. When we carefully analyse section 16 of the Act, it is clear that when a member votes or abstains from voting contrary to any direction issued by the political party to which he belongs, he can be disqualified. However, he can show that he is not disqualified by either showing that he has obtained prior permission of the party or that the party has condoned his act of abstention or voting against the Whip within 30 (thirty) days thereafter.

29. Sub-section (3) of section 16 clearly lays down that if any question arises as to whether a member of a Gram Panchayat has become subject to disqualification, the question shall be referred for decision of the BDO. What is a decision? A decision is a finding arrived at after hearing two sides. There can be no unilateral decision. That would be an order and not a decision. By use of the words "reference" and "decision", it is obvious that the BDO or the District Magistrate can decide a matter only after the same has been referred to him and after he has heard the parties.

30. Sub-section (4) requires that the decision be communicated within fifteen days thereafter. There is necessity to decide the matter within 15(fifteen) days because under sub-section (5) while the proceedings under section 4 are pending, no decision can be taken by the Gram Panchayat for removal or election of the Pradhan or the Upa-Pradhan. Keeping in view the short time period involved, the rules of natural justice may read to mean that a detailed inquiry is not to be conducted. This, however, cannot mean that no notice has to be issued or no hearing has to be conducted. In our considered view, hearing is a *sine qua non* of any judicial or quasi-judicial action. The Apex Court in *Jagjit Singh's* case has held that the Speaker acts like a Tribunal. The BDO also, therefore, acts like

a Tribunal and there can be no decision of a Tribunal without a hearing.

31. Reference may also be made to rule 27. Rule 27(1) requires that if during the meeting any member of a party violates the Whip issued by his party, then the Presiding Officer shall record the facts in the Remarks Column of the record of proceedings and obtain clarification from such member and then refer the question to the BDO or the District Magistrate, as the case may be. The role of a Presiding Officer is limited. He on coming to know of the fact that a Whip has been violated can only seek a clarification from the member who has violated the Whip. Other than seeking a clarification, he has no other power.

32. Rule 27(3) lays down that any member who has earned disqualification by reason of voting or abstention may submit letter of prior permission or condonation to the BDO or the District Magistrate within 30(thirty) days from the date of voting and the BDO or the District Magistrate can take up the action only after thirty days and decide the same within 15(fifteen) days.

33. Sub-rule (4) of rule 27 provides that if the BDO or the District Magistrate is satisfied on the basis of the report of the Presiding Officer and after making such enquiry as he may consider necessary record his decision. Therefore, the BDO or the District Magistrate is bound to conduct an inquiry. However, the rule gives wide leeway to the said official to decide what is the nature of the inquiry. In the case of a person who has voted against an express Whip, he may only issue a notice informing the member about the report of the Presiding Officer and the fact that within 30(thirty) days the member has not brought any letter or permission to the notice of the BDO and therefore, why should he not be disqualified. No evidence may be required to be recorded, but at least a notice will have to be sent and an opportunity of hearing has to be given.

34. Sri Bhowmik has relied upon certain judgments. In our view, those judgments have no applicability to the facts of the present case. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, , the petitioner had been on unauthorized absence from duty and overstayed his leave for a period of 3(three) years and it was in this background that the Apex Court held that the absence of issuance of show-cause notice does not make any difference because the employee had already been told that if he further overstays his leave in a foreign University, then no further leave shall be granted.

35. Reliance placed on the judgment in *Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others*, is also misplaced because there also it was a case of an employee having abandoned his service. The employee applied for leave much after the period of leave already sanctioned had expired. It was in this context that the Apex Court held that where the facts are admitted, the holding of an inquiry would be an empty formality and can be dispensed with.

36. In our considered view, the judgments of the Apex Court in *Punjab National Bank and Others Vs. Manjeet Singh and Another*, and *P.D. Agrawal Vs. State Bank of India and Others*, are also not at all applicable to the facts of the present

case.

37. Reliance placed on *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, is totally misplaced. In that case, the Apex Court held that where exigencies of situation requires, a prompt action be taken and a labourer may be dismissed without inquiry where if prompt action is not taken it may result in trouble spreading and situation worsening. That judgment has no applicability to the facts of the present case.

38. The judgment of the Apex Court in *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, does not at all help the petitioners. The relevant observations are in para-26 which reads as follows:-

"26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing."

The Apex Court has held that the rule of audi alteram partem is one of the basic pillars of natural justice and ordinarily must be followed. We see no reason why this rule could not have been followed in the present case.

39. In view of the above discussion, we are of the considered view that the least that the authority is required to do is to issue a notice to the member calling upon him to show-cause why he should not be disqualified. Since, the decision has to be taken within 15(fifteen) days, he may not conduct a detailed inquiry, but he must give a notice and a hearing to the affected party.

40. In this view of the matter, we allow the writ appeals, set aside the judgment of the learned Single Judge, quash the orders dated 14-05-2012 passed by the BDO disqualifying the appellants. Since we have quashed the order only on the ground that opportunity was not given, the BDO shall be at liberty to send fresh notices to the petitioners and they may reply to the same within one week of the receipt of the notice. The BDO can also in these notices fix a date for oral hearing and after hearing the petitioners, the BDO shall pass a reasoned order.

41. The appeals are disposed of in the aforesaid terms. No order as to costs.