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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:15.02.2021

\+ **W.P.(C) 6109/2020 & CMs 21956/2020, 21958/2020**

M/S AR AIRWAYS PVT LTD ..... Petitioner

Through Mr.Mukul Rohatgi, Sr. Adv. and Mr.P.S.Narasimha, Sr. Adv. with Mr.Abhishek Singh, Mr.Rohan Jaitley, Mr.A.K.Sinha, Mr.Amit Bhalla, Mr.Shreshth Arya, Mr.Kanti, Ms.Aditi Tripathi, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr.Anil Soni, CGSC with Mr.Devesh Dubey, Adv. for R-1 to 3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present petition was filed by the petitioner challenging the Show Cause Notice dated 30.07.2020 issued by the respondent no. 2 to the petitioner, informing the petitioner that based on the inputs received from the respondent no.3/Ministry of Home Affairs, the respondent no. 1/Ministry of Civil Aviation vide its letter dated 26.06.2020 has denied the renewal of security clearance of the petitioner. The Show Cause Notice mentioned that in view of the denial of security clearance, the petitioner did not remain in

compliance with Para 11 of the Civil Aviation Regulations Section –3, Series-C, Part-III and, therefore, the petitioner was called upon to show cause as to why its Air Operator Permit be not cancelled.

2. This petition was first listed before this Court on 08.09.2020 till when the petitioner was communicated the impugned orders dated 03.09.2020 and 04.09.2020, rejecting the approval of the Aircraft Operator Security Program of the petitioner relying upon the denial of security clearance to it and cancelling the Airport Entry Permits to its employees.

3. The petitioner was also communicated an order dated 07.09.2020 whereby the respondent no.2 cancelled the Air Operator Permit of the petitioner. The said communication *inter alia* recorded that the reply received from the petitioner to the Show Cause Notice was forwarded to the "Appropriate Authority for review and comments." The Appropriate Authority, that is the respondent no.1, reiterated its decision of denying the security clearance to the petitioner vide its letter dated 01.09.2020. As the security clearance is a pre-requisite for grant/renewal of the Air Operator Permit, the permit of the petitioner was cancelled.

4. This Court vide its interim order dated 08.09.2020 stayed the operation of the communication dated 07.09.2020 and 04.09.2020.

5. The petitioner thereafter filed an amended petition challenging the subsequent orders dated 03.09.2020, 04.09.2020 and 07.09.2020 as well.

6. The learned senior counsel for the petitioner submits that the Impugned Orders are in violation of the principles of natural justice inasmuch as the Show Cause Notice did not give the reasons for denial of the security clearance to the petitioner. Demand of such reasons was made by the petitioner even in its reply dated 10.08.2020 to the show cause notice, however, instead of supplying the same, the Impugned Orders dated 03.09.2020, 04.09.2020 and 07.09.2020 were issued by the respondent nos. 1 and 2. He submits that in absence of the reasons for denial of security clearance, the petitioner was clearly prejudiced in answering the Show Cause Notice.

7. The learned senior counsel for the petitioner further submits that even the Impugned Orders dated 03.09.2020, 04.09.2020 and 07.09.2020 did not give the reasons for denial of security clearance to the petitioner. The said orders were in the nature of a 'civil death' to the petitioner inasmuch as they stopped the operation of the petitioner. He submits that such order cannot, therefore, be sustained in absence of reasons.

8. The learned senior counsel for the petitioner in support of his submissions has also relied upon the judgment and order dated 02.02.2015 passed by this Court in WP(C) No.9131/2014, titled ***Jindal Steel and Power Ltd. and Anr. vs. Union of India and Ors.,*** wherein this Court in similar circumstances had directed the Show Cause Notice to be treated as withdrawn and directed the respondent no. 2 to serve a fresh notice on the petitioner therein for it to have an opportunity of giving an effective reply. He further places reliance on

the judgment of this Court in ***A.K. Sharma vs. Director General of Civil Aviation & Ors.,*** MANU/DE/0443/2002 to contend that the principles of natural justice would find application to the facts of the present case.

9. The learned senior counsel for the petitioner further submits that it is only in the Counter Affidavit now filed by the respondent no.3, that it has been disclosed that the security clearance of the petitioner was cancelled because of a criminal case registered against Sh.Ashok Kumar Chaturvedi, who was considered as a beneficial owner of the petitioner, and had been convicted in the said case. He submits that as far as the said criminal case is concerned, Mr.Chaturvedi has been released on bail by the High Court of Allahabad by an order dated 13.12.2010. The appeal of Mr.Chaturvedi challenging his conviction is still pending before the High Court. He further submits that such conviction has been treated as a disqualification under the Guidelines dated 25.06.2018, however, the Guidelines not being in the public domain, the petitioner is unable to make submissions if the conviction of Mr. Chaturvedi could at all be considered as a disqualification under the said Guidelines.

10. The learned senior counsel for the petitioner submits that the conviction of Mr.Chaturvedi was in the year 2010 and his appeal has been pending since that date. The petitioner was granted the Air Operator Permit in 2005, which has been renewed from time to time, lastly on 02.05.2019 till 11.05.2024. It is not shown by the respondent

as to how, based on such facts, the security clearance of the petitioner could have been denied in the year 2020.

11. On the other hand, the learned counsel for the respondents submits that the Air Operator Permit itself was made subject to grant of security clearance in favour of the petitioner. He submits that the petitioner, therefore, cannot obtain any benefit of such provisional extension of the Air Operator Permit granted to the petitioner.

12. As far as the security clearance is concerned, the learned counsel for the respondents submits that the petitioner did not disclose in its application that Mr.Chaturvedi was the ultimate beneficial owner of the petitioner company. This fact came to light only upon an enquiry being raised by the Ministry of Home Affairs and response thereto by the petitioner vide its letter dated 30.08.2019.

13. He submits that the conviction of Mr.Chaturvedi is itself a valid ground for refusing the grant of security clearance to the petitioner.

14. The learned counsel for the petitioner further submits that the respondents were under no obligation to disclose these facts in the Show Cause Notice and/or in the Impugned Order denying the renewal of the Air Operator Permit to the petitioner, as these are secret in nature and need not be disclosed.

15. He lastly submits that even otherwise, the petitioner had an alternate efficacious remedy in form of an appeal under Rule 3B of the Aircraft Rules, 1937.

16. I have considered the submissions made by the learned counsels for the parties.

17. It is not denied that the Air Operator Permit was granted to the petitioner in the year 2005 and has been renewed from time to time since that day. The last renewal of the permit, though provisional in nature and subject to grant of security clearance, was on 02.05.2019 till 11.05.2024.

18. The Show Cause Notice dated 30.07.2020 issued to the petitioner *inter alia* stated as under:

> *"Whereas, Ministry of Civil Aviation vide Letter No.AV.14015/290/2015-DT dated 26 June 2020 conveyed denial of renewal of security clearance of company and its Board of Directors i.r.g. M/s AR Airways Pvt. Ltd. on the basis of inputs received from Ministry of Home Affairs(MHA).*
>
> *Whereas, due to denial of Security Clearance, M/s AR Airways Private Limited doesn't remain in compliance with Para 11 of CAR Section-3, Series-C, Part-III and as the instant renewal issued vide letter AV.14015/11/2008-AT-I dated 02.05.2019 was subject to receipt of fresh security clearance from MHA, and therefore, the subject renewal of AOP can't remain in force.*
>
> *In view of the above, M/s AR Airways Private Limited is hereby directed to Show Cause as to why its AOP No.01/2005 should not be cancelled or suspended as per Sub-Rule (5) of Rule 134A of the Aircrafts Rules, 1937 to be read in conjunction with the para 12 of CAR Section-3, Series-C, Part-III, in view of the denial of security clearance by Ministry of Civil Aviation and consequent non compliance of para 11 of the subject CAR."*

19. The Show Cause Notice, therefore, did not disclose the reasons for denial of security clearance to the petitioner company. Clearly, in absence thereof, the petitioner was handicapped in giving any effective reply to the same.

20. The petitioner, by its letter dated 10.08.2020, even sought the reasons/grounds upon which its security clearance had been withdrawn. The respondent no. 1, however, issued the Impugned Letter dated 03.09.2020, rejecting the approval of the Aircraft Operator Security Program of the petitioner relying upon the denial of security clearance to it. By the Impugned Order dated 04.09.2020, the respondent no. 1 also cancelled the A.E.P. (Aerodrome Entry Permit) and T.A.E.P (Temporary Aerodrome Entry Permit) to the petitioner.

21. The Impugned Order dated 07.09.2020 was thereafter issued, stating inter-alia as under:

> *"4. Whereas, as per direction issued by MoCA vide letter dated 27.07.2020 and as per existing regulations, a Show Cause Notice (SCN) dated 30 July 2020 was issued to M/s AR Airways Pvt. Ltd. as to why their AOP No.01/2005 should not be cancelled or suspended due to withdrawal of Security Clearance and M/s AR Airways Pvt. Ltd. was asked to submit the reply to this office within 15 days of the issuance of Show Cause Notice.*
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> *5. Whereas, M/s AR Airways Pvt. Ltd. submitted their reply to this office Show Cause Notice dated 30 July 2020 and the reply submitted by the AR Airways was forwarded to the appropriate authority vide DGCA letter dated 20.08.2020, for review and comments. The appropriate authority i.e. MoCA after review on the basis of inputs given by MHA, reiterated the decision of denying the security clearance of the Operator vide its letter*

dated 01.09.2020 and accordingly, the security clearance in respect of the Operator stands denied.

6. After careful examination of the facts of the case, all the material on record, submissions made by the Operator and comments & directions of MoCA, I am of a considered view that:

i. The Security Clearance is a pre-requisite for grant, renewal & continued validity of AOP and the security clearance of the Operator stands denied by the competent authority i.e. MoCA on the basis of inputs provided by the Competent authority i.e. MHA.

ii. The submissions made by the Operator in reply to the Show Cause Notice dated 30.07.2020 issued by the DGCA have been examined by the competent authority i.e. MoCA and after reviewing the material on record the competent authority has reiterated the denial of security clearance and with this reiteration there is no ambiguity in respect of denial of security clearance of the Operator and consequently the Operator does not remain in compliance with the provisions of para 11.3 of DGCA Civil Aviation Requirements (CAR) Section 3 Series C Part III.

iii. In renewal letter dated 02.05.2019, it was categorically spelt out that renewal of AOP is subject to receipt of fresh security clearance and AOP shall be liable to be suspended or revoked if any adverse input or directions are received. Thus, the continuation of AOP was contingent upon receipt of fresh security clearance of the company and its directors and he same was known to the operator.

iv. In view of nature of operation, the security clearance of an entity involved in Non-Scheduled Air Transport Service is sine-qua-non and cannot be seen in isolation.

v. Since, the security clearance is a pre-requisite for grant/renewal of Air Operator Permit, the Air Operator Permit No. 01/2005 issued to M/s AR Airways Pvt. Ltd. cannot remain in force due to non availability/withdrawal of security

clearance of company and its Board of Directors i.r.o. M/s AR Airways Pvt. Ltd.

8. Therefore, in view of above and in exercise of powers under sub-rule 5 of Rule 134A of the Aircraft Rules, 1937 read along with Para 11.3 and Para 12 of DGCA CAR Section 3 Series C Part III, the Air Operator Permit No. 01/2005 in respect of M/s AR Airways Pvt. Ltd. stands cancelled with immediate effect and the Operator is hereby directed to surrender Air Operator Permit No. 01/2005 to this office immediately but not later than within one week from the date of issue of this Order."

22. A perusal of the impugned letters would show that apart from merely reiterating that the security clearance of the petitioner had been cancelled and that the respondent no. 1 had reiterated its decision revoking the security clearance, no other reason was cited in the Impugned Orders. The petitioner clearly remained unaware as to why its security clearance had been revoked.

23. In ***A.K. Sharma (Supra)***, this court reiterated that the principles of natural justice would naturally come into play even in respect of an administrative action which affects the civil rights of a citizen, unless they were specifically or by necessary implication, excluded.

24. In ***Oryx Fisheries Private Limited vs. Union of India and Ors.,*** (2010) 13 SCC 427, it was held that at the stage of the show-cause, the person proceeded against must be told the charges against him and the allegations on which they are based and be given a reasonable opportunity of making objections against proposed charges indicated in the notice. The show cause notice, instead of telling him the

charges, cannot confront him with definite conclusions of guilty. If that is done then the entire proceedings initiated by the show cause notice gets vitiated by unfairness and the subsequent proceedings become idle formality.

25. In the present case, it cannot be denied that the Impugned Orders have adverse civil consequences on the petitioner inasmuch as its operation as a Non-Scheduled Air Operator comes to a standstill because of the same. It is therefore, beyond doubt that the principles of natural justice have to be applied in such circumstances. The respondent no. 2 has also issued a Show Cause Notice to the petitioner before taking further steps of cancellation of the Air Operator Permit. The only question before this Court is as to whether such Show Cause Notice to the petitioner was to give/contain reasons as to why its security clearance is being revoked.

26. The reason for revocation of the security clearance has now been disclosed in the counter affidavit filed by the respondent no.3 as under:-

> *"4. The entire matter was examined in consultation with security agencies upon the inputs received and prevailing guidelines/policy of the Ministry of Home Affairs. It was noted M/s A.R. Airways Private Ltd. vide letter dated 30.08.2019 declared Shri Ashok Kumar Chaturvedi as ultimate beneficial owner of the company. The said declaration of the company was forwarded by Ministry of Civil Aviation vide OM dated 07.10.2019 to this Ministry. Security agencies provided following inputs in respect of Shri Ashok Kumar Chaturvedi, the ultimate beneficial owner of M/s A.R.Airways Private Limited:*

a) A case no.RC-003/1998/ACU-VII/AC-11/New Delhi was registered on 26.02.1998 u/s 120-B IPC r/w section 420 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 against Smt. Neera Yadav, IAS (UP-71), former Chairperson cum Chief Executive Officer, Noida & others, on the order dated 20.01.1998 passed in a Writ Petition(C) No.150/97 by Hon'ble Supreme Court of India. The Court had directed the CBI to investigate irregularities in allotment and conversion of certain plots of land in NOIDA.

b) After investigation, seven Charge Sheets were filed in this case but one charge sheet vide Court Case No.21/2002, arising out of the above case, was filed against Smt. Neera Yadav, IAS (UP-71) former Chairperson cum Chief Executive Officer, NOIDA and Shri Ashok Chaturvedi S/o Shri D.N.Chaturvedi, Chairman-cum-Managing Director of M/s Flex Industries Ltd., and Flex Engineering Ltd. NOIDA (UP) u/s 120-B IPC r/w 13(2) r/w 13(1)(d) of the PC Act, 1988 and substantive offence thereof on 16.01.2002.

c) On 07.12.2010, the Special Judge (Anti Corruption), UP (East) Ghaziabad convicted both the accused persons viz Smt. Neera Yadav and Shri Ashok Chaturvedi and sentenced them to 04 years RI and fine of Rs.25,000/- and Rs.50,000/- respectively.

d) Accused person, namely, Shri Ashok Chaturvedi filed a Crl.Appeal No.7826/2010 in the Allahabad High Court, challenging his conviction order which is pending.

e) The above inputs of the CBI against Shri A.K. Chaturvedi, the ultimate beneficial owner of M/s A.R.Airways Private Ltd., attracted security parameter, viz. "Conviction in the Court of law in the cases of charge sheet filed for the Prevention of Corruption Act" mentioned at serial no.23 of Annexure-C, of the Guidelines, dated 25.06.2018, of MHA on the assessment of proposals for national security clearance and corrigendum issued for the said guidelines on 27.06.2018. This qualifies for denial of security clearance to the company as per the said guidelines.

It is further submitted that in view of zero tolerance for corrupt practices and where additional inputs are of egregious nature, and have the potential of impacting the integrity of the sector and/or involve persons/institutions who embroiled in corrupt deals nationally or investigations carried out have resulted into conviction of key managerial persons connected in the present or in the past with such companies the denial of the security clearance in the matter is justified."

27. The allegations on which the security clearance has been revoked were, therefore, not of such nature as could not have been put to the petitioner for eliciting its response thereto. The submission of the respondent that the same being secretive could not be put to the petitioner cannot be accepted. The conviction of Mr. Chaturvedi and the consequence thereof, was not of such nature so as to attract the Official Secrets Act, 1923 or a plea of privilege by the respondents. Therefore, the Show Cause Notice issued in absence of such disclosure was clearly perfunctory in nature and could not have had any meaningful response from the petitioner. There was a clear violation of principles of natural justice.

28. The subsequent action of the respondent was equally tainted for want of compliance with the principles of natural justice and cannot be sustained. In fact, even the impugned orders did not contain the reason for denial of security clearance to the petitioner.

29. The submissions of the learned counsel for the respondent that a remedy of appeal is available to the petitioner also cannot be sustained

as the initial non-compliance with the principles of natural justice cannot be remedied in such appeal.

30. In the ***Institute of Chartered Accountants of India vs. L.K. Ratna and Ors***. (1986) 4 SCC 537, the Supreme Court while considering whether a Member of the Institute is entitled for a personal hearing by the Council of the Institute after the Disciplinary Committee has submitted its report to the Council of its enquiry into the allegations of misconduct against the Member, rejected the submissions of the Institute that it is not mandatory that the Member should be heard by the Council before it proceeds to record its finding as the Member has a right to appeal against such finding. It was held as under:

> *"**17**. It is then urged by learned counsel for the appellant that the provision of an appeal under Section 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under Section 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir William Wade's erudite and classic work on "Administrative Law"5th Edn. But as that learned author observes (at p. 487), "in principle there*

ought to be an observance of natural justice equally at both stages", and If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

And he makes reference to the observations of Megarry, J. in Leary v. National Union of Vehicle Builders. Treating with another aspect of the point, that learned Judge said:

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

The view taken by Megarry, J. was followed by the Ontario High Court in Canada in Re Cardinal and Board of Commissioners of Police of City of Cornwall. The Supreme Court of New Zealand was similarly inclined in Wislang v.

Medical Practitioners Disciplinary Committee and so was the Court of Appeal of New Zealand in Reid v. Rowley.

***18**. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected an publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."*

31. In ***Shri Farid Ahmed Abdul Samad & Anr. vs. The Municipal Corporation of the city of Ahmedabad and Anr.,*** (1976) 3 SCC 719, the Supreme Court held that if an order at the inception is invalid, its invalidity cannot be cured by its approval or by its confirmation by the concerned Authorities. Paragraphs 24 to 26 of the said judgment are quoted hereinbelow:

> *"24. We are clearly of opinion that Section 5A of the Land Acquisition Act is applicable in the matter of acquisition of land in this case and since no personal hearing had been given to the appellants by the Commissioner with regard to their written objections the order of acquisition and the resultant confirmation order of the State Government with respect to the land of the appellants are invalid under the law and the same are quashed. It should be pointed out, it is not a case of failure of the rules of natural justice as such as appeared to be the only concern of the High Court and also of the city civil court. It is a case of absolute non-compliance with a mandatory provision under Section 5A of the Land Acquisition Act which is clearly applicable in the matter of acquisition under the Bombay Act.*
>
> *25. We should also point out that the acquisition order must be an order valid under the law and the question of appeal arises only after confirmation of the order by the State Government. If the order is, at inception, invalid, its invalidity cannot be cured by its approval of the Standing Committee or by its confirmation of the State Government.*
>
> *26. Besides hearing of objections under Section 5A of the Land Acquisition Act to be given by the Commissioner under the Bombay Act cannot be replaced by a kind of appeal hearing by the City Civil Judge. The Bombay Act having assigned the duty of hearing objections to the*

Commissioner, he alone can hear them and not the City Civil Judge even assuming that all objections could be entertained by him in appeal. (See ***Shri Mandir Sita Ramji v. Ltd. Governor of Delhi.)****"*

32. In ***Oryx Fisheries Pvt. Ltd.*** (supra), the Supreme Court reiterated that absence of reasons in the original order cannot be compensated by disclosure of reasons in the appellate order. It followed the law stated in the ***Institute of Chartered Accountants of India*** *(supra*).

33. In ***Aslam Mohammed Merchant vs. Competent Authority & Ors.***, (2008) 14 SCC 186, the Supreme Court held that once the Show Cause Notice issued under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 is found to be illegal, the same would vitiate all subsequent proceedings.

34. In ***State of U.P. vs. Mohammad Nooh,*** 1958 SCR 595, the Supreme Court held as under:

"11. On the authorities referred to above it appears to us that there may conceivably be cases – and the instant case is in point – where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may,

we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

35. This Court in ***L.P.Desai vs. Union of India & Ors.,*** (2003) 71 DRJ 553, held that mere fact that the petitioner therein had filed an appeal and was heard in the appeal would not alter the situation that the original order passed was in violation of the Principles of Natural Justice and therefore, *void ab initio*. This Court held as under:

"18. Before parting with this case, it would be relevant to note that though the aforesaid discussion has proceeded on the assumption that no prejudice has been caused to the petitioner, in point of fact prejudice has actually been caused to the petitioner. This is so because the Show Cause Notice was not issued to the petitioner. Even the show cause notice issued to the company did not contain specific allegations against the petitioner to which he could reply. No opportunity as such was given to the petitioner to represent against the proposed imposition of penalty. Obviously, the petitioner was not heard before the order in original was passed whereby the aforesaid penalty was imposed upon him. The mere fact that he filed an appeal

and was heard in the appeal would not alter the situation. The proceedings against him were void ab initio. Had the petitioner been issued a notice in terms of section 4L of the said Act, he could have represented against the imposition of such penalty. He could have placed on record various facts and circumstances to show that no offence was committed by the company and that even if such offence was committed by the company, he had no hand in it. All these circumstances, if he were able to establish them, would have absolve him of the liability of penalty which he now bears like a garrotter round his neck. So, even if the question of prejudice were to be taken up, it would be clear that the order in original as well as the Appellate Order imposing a penalty on the petitioner could not be sustained."

36. In view of the above, the impugned Show Cause Notice dated 30.07.2020 and the orders dated 03.09.2020, 04.09.2020 and 07.09.2020 are set aside, leaving it open to the respondents to proceed against the petitioner in accordance with law, if so advised.

37. There shall be no orders as to cost.

NAVIN CHAWLA, J

FEBRUARY 15, 2021
R,N