

**Rameshwari Devi Vs. State of Rajasthan and ors.**

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**Court :** Rajasthan

**Decided On :** Nov-09-1998

**Reported in :** AIR1999Raj47

**Judge :** B.S. Chauhan, J.

**Acts :** Rajasthan Municipalities Act, 1959 - Sections 63 and 64; [Constitution of India](#) - Article 14

**Appeal No. :** C.W.P. No. 3486 of 1998

**Appellant :** Rameshwari Devi

**Respondent :** State of Rajasthan and ors.

**Advocate for Def. :** K.L. Jasmatiya, Addl. Adv. General,; R.R. Kanwar, Deputy Govt. Adv. and;

**Advocate for Pet/Ap. :** P.P. Choudhary, Adv.

**Judgement :**

ORDER

**B.S. Chauhan, J.**

1. The instant writ petition has been filed challenging the inquiry report dated 30-9-1998 (Annexure P-20) and impugned order dated 7-10-98 (Annexure P-18) by

which the petitioner has been removed from the post of Chair-person of the Municipal Board, Asind district Bhilwara. and further she has been declared disqualified to contest election of the Municipal Board for the post of Chair-person/Member for a period of five years.

2. The facts and circumstances giving rise to this case are that the petitioner was elected as the Chair-person of the Municipal Board, Asind on 28-8-1995. Some irregularities were pointed out in allotment of a shop No. 15 in favour of one Shri Gautam Chand Jain, vide order dated 4-7-97, by the petitioner and proceedings under Section 63 of the Rajasthan Municipalities Act, 1959 (hereinafter referred as 'the Act') were initiated. Petitioner was put under suspension and judicial enquiry commenced. Allegations and counter-allegations regarding allotment of the said shop had been that it was not located in the main market, no person was willing to have it on rent. One Shri Gautam Chand Jain applied for the allotment of the said shop vide application dated 4-7-96, contained in Annexure R-19, on which the petitioner passed the order on the same day directing the Executive Officer to do the needful for allotment of the shop in his favour and petitioner passed the order on the next day to accept the rent. A preliminary enquiry was held against the petitioner. She was served with a Notice dated 2-4-98 (Annexure P-8) to show cause why the proceedings under Section 63 of the Rajasthan Municipalities Act, 1959 (hereinafter referred as 'the Act') be not initiated against her as she had hatched a conspiracy to allot the said shop to Mr. Gautam Chand Jain on the rent of Rs. 100/-p.m. while the shop was worth Rs. one lac and it could have fetched the rent up to Rs. 250/- per month and the said allotment had been made in violation of the Rules.

3. Petitioner filed reply to the show cause notice. However, after considering it, the respondents passed the order of suspension dated 18-4-98 (Annexure P-9) and the judicial enquiry commenced. Petitioner was served with the charge-sheet (Annexure P-10) on the allegations, referred to above. It was stated in that letter that along with the charge-sheet, the Statement of Allegations was, also, annexed but petitioner did not receive the said Statement. Subsequent events are put in chronological order as under:--

14-9-98:

Petitioner filed an application before Enquiry Officer to issue a copy of the complaint, on the basis of which the charge-sheet was served; preliminary enquiry report, list of witnesses and the copy of the report that the premises in question was capable to fetch more rent.

24-9-98:

Application dated 14-9-1998 was rejected by the Enquiry Officer unceremoniously.

26-9-98:

Petitioner filed reply to the charge-sheet (Annexure P-16) wherein she again stated that she could not file effective reply to the charge-sheet for want of documents referred to above.

26-9-98:

Department examined three witnesses, viz., Satya Narain-PW 1, Bhanwar Lal-PW 2 and Sabir Mohammed-PW 3, to support its case.

26-9-98:

Petitioner was directed to adduce evidence in her defence on 30-9-98.

30-9-98:

Petitioner preferred an application for short adjournment as she was unable to attend the enquiry for the reason that she was having 'Pooja' at her residence on that date. In support of her application, she also filed the printed invitation card for the occasion.

30-9-98:

Enquiry Officer rejected the said application for adjournment.

30-9-98:

Arguments of both side counsel were concluded.

30-9-98:

Enquiry Officer submitted its report.

07-10-98

The State Government passed the impugned order removing the petitioner from the post of the Chair-person and declaring her disqualified for a period of five years to contest any election of

4. Being aggrieved and dissatisfied, the petitioner has approached this Court by filing the instant writ petition.

5. Various submissions have been made by learned counsel for the parties regarding appropriateness/sanctity and arbitrariness/illegality in respect of the allotment of the premises in dispute by the petitioner to Shri Gautam Chand Jain, but it cannot be adjudicated upon by this Court and I am not inclined to enter into the arena of investigation in the matter of allotment of the said shop and keep confined to the correctness of the procedure adopted in taking the decision of removal of the petitioner and further declaring her disqualified.

6. Mr. P. P. Choudhary, learned counsel for the petitioner, has submitted that the petitioner was not served with a copy of the Statement of Allegations along with the charge-sheet. When petitioner made an application to supply her the documents/as referred to above, her application was rejected by the Enquiry Officer vide order dated 24-9-98 without assigning any reason. Petitioner was forced to submit reply to the charge-sheet without giving her the copies of the required documents. The Department examined its witnesses on 26-9-98 and the petitioner's application to give a short adjournment was rejected on 30-9-98 and the arguments were concluded. Enquiry report was submitted on the same day and it was mandatory on the part of the State to supply a copy of the enquiry report to the petitioner and petitioner ought to have been given an opportunity to furnish her explanation and only after considering her explanation, respondents could have passed the impugned order. Petitioner was not given the copy of the enquiry

report nor was any explanation sought, hence the impugned order has been passed in flagrant violation of the provisions of Sections 63 and 64 of the Act and is violative of the principles of natural justice and, thus, liable to be quashed by this Court.

7. On the contrary, Mr. K. L. Jasmatiya, learned Additional Advocate General and Mr. Kailash Joshi appearing for the respondents have submitted that there was no requirement under the law to supply a copy of the enquiry report to the petitioner and seek her explanation before passing the impugned order nor was there any requirement under the law to furnish a copy of the preliminary enquiry report and other documents to the petitioner to facilitate her to file reply to the charge-sheet. The State Government was not obliged to pass a reasoned order as the law contemplates to the contrary.

8. I have considered the rival submissions made by the learned counsel for the parties. Section 63 of the Act reads as under :--

'Removal of Member.-- (1) The State Government may, subject to the provisions of sub-sees. (2) and (3), remove a Member of the Board on any of the following grounds, namely :--

(d) that he has :--

(i) been guilty of misconduct in the discharge of his duties, or.....

Provided that an order of removal shall be passed by the State Government after such enquiry as it considers necessary to make either itself or through such Officer or Authority as it may direct, and after the Member concerned has been afforded an opportunity of explanation.'

The State Government had issued Notification No. F-4 (34) LSG/A-59 dated 11-11-59 prescribing the procedure for holding an enquiry and the salient features of the said Notification are as under:--

'(3) If the Member denies the charge, the Judicial Enquiry Officer shall take such evidence, oral or documentary, as may be produced in support of and against the

charge.

(4) the Judicial Enquiry Officer may, if he thinks fit, on the application of the Member,..... issue summons to witnesses directing them to appear before him and/or produce any document.

(6) the Member, against whom the charge has been made, may be examined at any stage by the Judicial Enquiry Officer.'

9. If the provisions of Section 63 of the Act are given a literal meaning, the impugned order could not have been passed without furnishing a copy of the enquiry report to the petitioner and at lording her an opportunity to furnish her explanation. In *Rawat Dan v. State of Rajasthan*, 1975 Raj LW 116, similar provisions of Section 17(4) of the Rajasthan Panchayat Act, 1953 and Rule 22 of the Rules framed thereunder, were interpreted by this Court holding that the proceedings re-stilling in the removal of a duly elected official of the Gram Panchayat, were quasi-judicial in nature. Thus, the principles of natural justice were required to be followed and even in absence of any statutory provision to supply a copy of the enquiry report and seeking the explanation of the delinquent officer-bearer, the Authority was to adopt the said modalities before passing the order of removal. The principles of natural justice require to provide a fair opportunity to such an elected official. The Court distinguished the case of a 'duly elected person' from the 'Government employee' and observed that for the removal of a duly elected official, a mere stringent procedure and standard of proof is required and if the enquiry report has not been furnished and explanation has not been sought from the duly elected official, it cannot be held that he has been given a reasonable opportunity to meet the charges. While deciding the said case, this Court placed reliance upon a large number of judgments, i.e., *Nandram Hunatram, Calcutta v. Union of India*, AIR 1966 SC 1922; *State of Madras v. A.R. Srinivasan*, AIR 1966 SC 1827; *Krishna Chandra v. Union of India*, AIR 1974 SC 1589; (1974 Lab IC 1589); *Testeels Ltd. v. N. M. Desai*, AIR 1970 Guj 1 : (1970 Lab IC 35); *Padifield v. Minister of Agriculture, fisheries and Food*, 1968 (I) All ER 694 and *Chaina Ram v. State of Rajasthan*, 1973 Raj LW 36 : (1973 Lab IC 1201). The judgment in *Rawat Dan* (supra) has been approved and followed by

this Court in Anant Ram Sharma v. State of Rajasthan, 1998 (3) WLC 194 : (1998 A1 HC 2809) wherein this Court has observed as under at page 2810 (of AIHC) :--

'Non-supply of the copy of the enquiry-report prejudicially affects the right of the party to effectively contradict the findings. When the petitioner is afforded reasonable hearing under the statute itself, it would be a hearing in real sense and not the semblance of hearing.'

10. The Court further observed that if an order of removal is not a reasoned order and is a stereotype, the Court is under an obligation to quash the same as it would be a case of non-application of mind, for the reason that Quasi-Judicial-Authority is bound to pass a reasoned and speaking order 'as it is the only visible safeguard against public injustice or arbitrariness, when the civil consequences of administrative action are grave and its effect is highly prejudicial to the interest and right of the parties, there is more reason to record reasons while passing the order.'

11. Similar issue came for consideration before the Division Bench of Karnataka High Court in M. Puttaranganaika v. Director of Municipal Administration, 1995 All AIHC 3113, wherein the Court held that before passing the impugned order of removal of an office-bearer in the municipality on the ground of misconduct, it was mandatory to furnish a copy of the enquiry report and the authority must apply its mind otherwise it would not only be against the principles of natural justice but would also be violative of Article 14 of the [Constitution of India](#).

12. This view stands fortified by the law laid down by the Hon'ble Supreme Court from time and again. There can be no dispute regarding the proposition of law that even on the administrative side, the authorities are bound to pass the speaking and reasoned order.

13. In Shrilekha Vidyarthi v. State of U. P., AIR 1991 SC 537, the Apex Court has observed as under at page 554 :--

'Every such action may be informed by reason and it follows that an act uninformed by reason is arbitrary the rule of law contemplates governance by law

and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that 'be you ever so high, the laws are above you.' This is what a man in power must remember always.'

14. In *Life Insurance Corporation of India v. Consumer Education and Research Centre*, 1995 (5) SCC 480 : (AIR 1995 SC 1811) the Apex Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. 'Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest.'

15. The same view has been taken by the Supreme Court in *Mahesh Chand v. Regional Manager, U. P. Financial Corporation*, 1992 (2) JT 327 : (AIR 1993 SC 935) and *Union of India v. M. L. Capoor*, AIR 1974 SC 87 : (1974 Lab IC 338).

16. In *State of West Bengal v. Atul Krishna Shaw*, 1991 (Suppl) I SCC 414 : (AIR 1990 SC 2205) the Supreme Court observed as under (para 7 of AIR):--

'If the findings are based on no evidence or based on conjecture or surmises as no reasonable man would, on given facts and circumstances, come to the conclusion reached by the authority on the basis of the evidence on record, certainly this Court would oversee whether the finding recorded by the ..... authority is based on any evidence or beset with surmises or conjecture. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice but also a valid discipline for the Tribunal itself. Therefore, the statement of reason is one of the essentials of justice.'

17. In *S. N. Mukherji v. Union of India*, AIR 1990 SC 1984 : (1990 Cri LJ 2148) it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above,

case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

18. In *Krishna Swamy v. Union of India*, AIR 1993 SC 1407 the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order of borne-out from the record. The Court further observed as under at page 1424:--

'Reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and actuated and there rational nexus and syntheses with the facts considered and the conclusion reached. Lest it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21.'

19. Similar view has been taken by the Supreme Court in *Institute of Chartered Accountants of India v. L. K. Ratna*, 1986 (4) SCC 537 : (AIR 1987 SC 71); *Board of Trustees of the Port of Bombay v. Dilip Kumar Ragvandranath Nagkarni*, AIR 1983 SC 109: (1983 Lab IC 419) : 1980 WLN (UC) 311 and 1983 Raj LR 246 : (1983 Lab IC NOC 4I).

20. If the submission of Mr. Jasmatiya is accepted that there is no need to furnish the enquiry report to the delinquent official and give her opportunity to explain, it would make the proviso to Section 63( 1 )(d) redundant as it provides for passing an order after the Member concerned has been afforded an opportunity of explanation.

21. While interpreting a provision of the statute, it should not be construed to render that provision almost meaningless or by not giving significant meaning to the words staring at the face providing for consequences of non-compliance. Whatever may have been the intention of the legislature or the Government, 'when such intention is translated into a statute or rule, whether interpretation has been implemented or not, can only be judged by the wordings of the particular provision of such statute or rule.' (vide *Suneeta Ramchandra v. State of Maharashtra*, 1986 (2) SCC 348 : (AIR 1986 SC 1552).

22. An interpretation of the Act or the Rules without giving full effect to the language used, would be unsupportable and hence cannot be made, (vide Chhunnibhai Deajibhai v. Narain Rao, AIR 1965. SC 1457. After considering a large number of its earlier judgments, the Hon'ble Supreme Court in Sultana Begum v. Premchandra Jain, 1997 (1) SCC 373: (AIR 1997 SC 1006) has observed as under at page 1010 (of AIR):--

'(4) The Courts have also to keep in mind that an interpretation which reduces one of the provisions, is 'dead law' or 'useless lumber' is not harmonious construction.

(5) To harmonise is not to destroy any statu-tory provision or to render it otiose.'

23. The same view has been taken by the Supreme Court in State of Bihar v. Bihar Distillery, AIR 1997 SC 1511 : (1997 AIR SCW 259) wherein the Court has held that an interpretation which renders an enactment an exercise in futility, should be avoided. Similar view has been taken by the Supreme Court in South Central Railway Employees' Co-operative Credit Society, Secunderabad v. Registrar of Co-operative Societies, 1998 (2) SCC 580: (AIR 1998 SC 703). In Institute of Chartered Accountants of India v. Price Water House, 1997 (6) SCC 312 : (AIR 1998 SC'74) the Apex Court has held that the interpretation making any provision as surplusage. is not permissible.

24. In the instant case, the respondents have not passed a speaking/reasoned order. It is astonishing to note and what can be more disgraceful for the State that in a democratic set-up, it removed the duly elected official of the Municipal Board by issuing the order on a cyclostyled paper by filling the blanks as is evident from the impugned order dated 7-10-98 (Annexure P-18). The submission made by Mr. Jasmatia that the State Government can neither apply its mind nor pass a reasoned order as in view of the provisions of sub-section (3) of Section 63, which provides that after conclusion of enquiry, the Enquiry Officer shall send the record to the State Government and the State Government shall pass the orders in 'confirmity of those findings' for the reason that if the State Government is not required to apply its mind and pass the speaking/reasoned order, what was the occasion for sending the record along with the enquiry report. The Enquiry Officer would have been authorised to pass the order of removal and disqualification or

could have simply communicated, the findings. The statutory provisions have to be interpreted in view of the purposive construction. Moreover, in passing the reasoned and speaking order, after application of mind and application of principles of natural justice, are in-built and mandatorily required to be complied with to avoid any kind of arbitrariness and for compelling the authorities to have strict adherence to the procedural fairness.

25. Thus, in view of the above, the impugned order dated 7-10-98 is liable to be struck down on the ground that it is not a reasoned order. No doubt, the competent authority may pass a non-speaking order if it agrees with the Enquiry Officer, (vide *Ram Kumar v. State of Haryana*, AIR 1987 SC 2043 : (1987 Lab IC 1890); *S. N. Mukherjee v. Union of India*(AIR 1990 SC 1984) (supra) and *S.B.B.J. v. Prabhu Dayal Grover*, 1995 (6) SCC 279 : (AIR 1996 SC 320). But in a case where the enquiry report is not made available to the delinquent official, it is beyond imagination how the non-speaking/non-reasoned order can be permitted to be sustained in the eyes of law.

26. There is no dispute at the Bar that the petitioner had not been supplied the documents as prayed by her. Respondents have admitted that the copies of the documents relied upon by the Department against the petitioner had never been supplied in spite of her request in this behalf, rather they contended that in law, it was not necessary to supply the said documents, the Court reaches the inescapable conclusion that the inquiry itself stood vitiated and the inquiry report dated 30-9-98 as well as the impugned order dated 7-10-1998 are of no consequence whatsoever. For such a conclusion, I can safely plank upon the judgments of the Hon'ble Apex Court.

27. In *State of Madhya Pradesh v. Chintamani Sadashiv Waishampayan*, AIR 1961 SC 1623, the Constitution Bench of the Apex Court placed reliance on its earlier judgment in *Union of India v. T. R. Verma*, AIR 1957 SC 882 and *Khem Chand v. Union of India*, AIR 1958 SC 300 and held that in domestic inquiry, the principle of natural justice requires that a party should be given a fair opportunity of adducing all relevant evidence, on which he wants to rely and the evidence of the opponent should be taken in his presence and he should have an opportunity to

cross-examine the witnesses and no material should be relied on against him without offering an opportunity of explanation regarding the said document.

28. Similarly, another Constitution Bench of the Hon'ble Supreme Court in Major U. R. Bhatt v. Union of India, AIR 1962 SC 1344 held that the Enquiry Officer is supposed to afford to the public servant an opportunity to remain present and to make his defence and according him a reasonable opportunity to defend himself. However, if such a delinquent employee does not participate in the enquiry or adopts delaying tactics, it would not mean that reasonable opportunity had not been accorded to him.

29. In State of Uttar Pradesh v. Mohammed Shariff, AIR 1982 SC 937 : (1982 All LJ 452) the, Apex Court has observed as under at page 938 (or AIR) :--

'Secondly, it was not disputed before us that a preliminary enquiry had proceeded the disciplinary enquiry and during the preliminary enquiry, statement of witnesses were recorded but the copies of these statements were not furnished to him at the time of the disciplinary enquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary enquiry was. also, rejected. In the face of these facts, which are not disputed, it seems to us that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary enquiry; it would be gainsaid that that in the absence of necessary particulars and statement of witnesses he was prejudiced in the matter of his defence.'

30. In Kashinath Dixit v. Union of India, AIR 1986 SC 2118 : (1986 Lab IC 1939) the Apex Court considered its earlier judgments and observed as under at pages 2121 and 2122 (of AIR) :--

'When a Government servant is facing a disciplinary proceeding, he is entitled to be offered a reasonable opportunity to meet the charges against him in an effective manner and no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses and point-out the inconsistencies with a view to show that the allegations are

incredible..... Whether or not refusal to supply copies of the documents or statement has resulted in prejudice to the employee facing the departmental enquiry, depends upon the facts of each case.'

31. Similarly, in the State of Punjab v. Bhagat Ram, AIR 1974 SC 2335 : (1974 Lab IC 1442) the Apex Court has observed as under paras 6 and 8 (of AIR) :--

'The State contended that the respondent was not entitled to get copies of the statements. The reasoning of the State was that the respondent was given an opportunity to cross-examine the witnesses and during the cross-examination, the respondent would have the opportunity of confronting the witnesses with the statement. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.....The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying of the statement is that the Government servant will be able to refer to the previous statement of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant, he will not be able to have an effective and useful cross-examination. It is unjust and unfair to deny the Government servant the copies of the statement of the witnesses examined during the investigation and produce at the enquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirement of giving a Government servant a reasonable opportunity of showing cause against the action proposed to be taken.'

32. The same view has been taken by the Hon'ble Supreme Court in State of Assam v. Mahendra Kumar Das, AIR 1970 SC 1255 : (1970 Lab 1C 1056); Chandrama Tiwari v. Union of India, AIR 1988 SC 117 : (1988 Lab IC 339) and High Court of Punjab and Haryana v. Amreek Singh, 1995 (Suppl) 1 SCC 321. In State of U. P. v. Shatrughan Lal, 1998(6) JT 55: (AIR 1998 SC 3038) the Apex Court, after considering all the relevant judgments on the issue, has held that preliminary enquiry, which is conducted invariably on the back of the delinquent may often constitute the whole basis of the charge-sheet. Before a person is,

therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry if those witnesses are proposed to be examined at the departmental trial. It further observed that the principles of natural justice require that the opportunity to defend must be an effective opportunity and not a mere pretence and if the copies of the documents, which are to be relied upon against the delinquent official, are not supplied to him in spite of his request, and he is called upon to submit the reply, it cannot be said to have been a reasonable opportunity to defend.

33. Admittedly, it is not a case where the respondents have come forward and stated that the documents which had not been supplied to the petitioner, had not been relied upon against her and no prejudice has been caused to her because the impugned order may be tested on the touchstone of the doctrine of prejudice. Vide *Managing Director, ECIL Ltd. v. B. Karunakar*, 1993 (4) SCC 727 : (AIR 1994 SC 1074); *State Bank of Patiala v. S. K. Sharma*, 1996 (3) SCC 364: (AIR 1996 SC 1669); *Major G. S. Sodhi v. Union of India*, 1991 (2) SCC 382 : (AIR 1991 SC 1617); *S. K. Singh v. Central Bank of India*, 1996 (6) SCC 415; and *Monika Jain v. State of Rajasthan*, 1998 (1) Raj LW 71.

34. The Enquiry Officer has recorded the following findings :--

(1) There was no need to supply the documents, i.e., preliminary enquiry report, statement of allegations and other documents asked by the delinquent office-bearer as she must be having the copies of the same. Department cannot be forced to supply her the copies of the said documents as there was no such requirement in law;

(2) It appeared that the delinquent did not have any evidence to adduce in support of her case;

(3) The only mode of transferring the land/ shop could have been by sale and there was no provision of renting out the said premises and, thus, the delinquent has committed an error in, giving the shop on rent;

(4) The premises in dispute had been given on a lesser amount of rent though it could have fetched higher amount of rent; and

(5) The charges alleged against the delinquent are proved in view of the statement of witnesses examined by the department.

35. The issue whether the premises could have been given on rent or could have been alienated only by sale was not involved at all; nor there was any such charge framed against the petitioner. The other findings recorded by the Enquiry Officer are perverse and cannot be permitted to be sustained in the eyes of law. There was no material on record to substantiate that petitioner was having the copies of all the documents. It is beyond imagination that she was having the copies of the preliminary enquiry report, held unilaterally behind her back and statement of allegations, which even the department failed to produce in the Court nor respondents are in possession of it. Same remained the position regarding other documents. It is not understood, by any reason why a short adjournment, even of one day, could not have been given to the petitioner to adduce evidence in support of her case. This aspect requires examination. The petitioner was put under suspension on 18-4-98. Her application for supplying the documents was rejected on 24-9-98. The Department examined its witnesses on 26-9-98 and 30-9-98 was fixed for recording the evidence of the petitioner's witnesses. It was first opportunity given to her to lead evidence. It is not a case that she had sought various adjournments and trying to delay the conclusion of the enquiry. Moreover, if the proceedings were pending for last several months, a short adjournment of a day ought not have been refused. Thus, it is beyond imagination that petitioner had been given a fair opportunity to defend herself. In view of the law referred to above, it is evident that if the delinquent is not given reasonable opportunity to meet the charges, the enquiry itself vitiates. In the instant case, the Enquiry Officer himself has recorded the finding that there was no need to supply the documents. Unfortunately, same had been the stand of the respondents of this Court. In view of the law referred to above, the enquiry itself stands vitiated. There is no force in the submissions made by Mr. Jasmatiya and Mr. Joshi that this Court has very limited scope to interfere with the enquiry report. In the case like instant, where the finding recorded by the Enquiry Officer are perverse and are based on no

evidence, this Court is bound to interfere.

36. In *C. Chhanga Reddy v. State of Andhra Pradesh*, 1996 (10), SCC 193 : (AIR 1996 SC 3390) the Hon'ble Apex Court has observed as under at page 3408 (of AIR) :--

'A Court of equity must so act within the permissible limits as to prevent injustice. 'Equity is nit based on age of child-bearing' and an effort to do justice between the parties is a compulsion of judicial conscience. Courts can and should strive to evolve an appropriate remedy, in the facts and circumstances of a given case, so as to further the cause of justice, within the available range and pleading new tools of the said purpose, if necessary to chistal hard-edge of the law.'

37. Similarly, in *Narshimba Murthy v. Sushila Bai*, 1996 (3) SCC 644: (AIR 1996 SC 1826) the Hon'ble Apex Court observed that the purpose of law is 'to prevent brooding the sense of injustice. It is not the words of law but the spirit and internal sense of it that makes the law meaningful. The letter is law is the body with sense and reasons of law is the soul.' Therefore, the Court is under an obligation to adopt a pragmatic approach in view of the given facts of a case. Fairness in action and any arbitrariness in the said action is an established test to Judge the validity of the action of the State and State instrumentalities. The judiciary, being the guardian of the Rule of Law, particularly, as the power to judicial review, has been invested in the superior Courts, it was a special and additional duty to perform the duty and oversee that all individuals and institutions, including the Executive and Legislative acts, within the frame-work of law. Vide *Gurmail Singh v. State of Punjab*, 1991 (1) SCC 189; *Punjab National Bank v. A.I.N.B.I. Employees' Federation*, AIR 1997 SC 1086 : (1997 AIR SCW 1095) and in *Re : Vinay Chand Mishra*, 1995 (2) SCC 584 : (AIR 1995 SC 2348).

38. The Court is under a legal obligation, in exercise of its power under Articles 226 and 227 of the [Constitution of India](#), to effectuate the law and to enforce the rule of law ensuring that the authorities and the organs of the State act in accordance with law. If legal provisions prohibit certain type of activities then it is of utmost importance and such legal provisions are effectively enforced for the reason that if law is enacted but is not being voluntarily obeyed then it has to be

enforced. The Courts' solemn duty is 'to further the clear internment of the Legislature and not to frustrate it by ignoring the same.' If the functionaries of the Government become lawbreakers, it is bound to breed contempts for law and would encourage lawlessness and every man would have the tendency to become law into himself, thereby leading to anarchism. No civilised nation can permit that to happen. Vide *D. R. Basu v. State of West Bengal*, 1997 (1) SCC 416 : (AIR 1997 SC 610) and *Panchugopal v. Umesh Chandra Goswami*, 1997 (4) SCC 713 : (AIR 1997 SC 1041).

39. Similar view has been expressed by the Hon'ble Supreme Court in *Ghaziabad Development Authority v. Delhi Auto General Finance Ltd.*, 1994 (4) SCC 42 : (AIR 1994 SC 2263); *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, AIR 1991 SC 101 : (1991 Lab IC 91); *Haji T. M. Hasan Rowther v. Kerala Financial Corporation*, AIR 1988 SC 157 and *Sirsi Municipality v. Cocila Crom Fransis Tellis*, AIR 1973 SC 855: (1973 Lab 1C 453).

40. There is another aspect of the matter. A finding of fact recorded by the Authority/Court must be based on evidence on record. If in exercise of powers of judicial review the Court finds that finding is based on no evidence, the Court has no option but to declare the same as invalid. Vide *Bhagwali Prasad Dubey v. Food Corporation of India*, 1987 (Suppl) SCC 579 : (AIR 1988 SC 434); *Union of India v. H. C. Goel*, AIR 1964 SC 364; *Ministry of Finance v. S. B. Ramesh*, 1998 (1) JT (SC) 319 : (AIR 1998 SC 853); *Surya Prakash Gothwal v. State of Rajasthan*, 1980 WLN 542; *C. L. Subramaniam v. The Collector of Customs, Cochin*, AIR 1972 SC 2178 : (1972 Lab IC 2178) the *Site of Assam v. Bimal Kumar Pandit*, AIR 1963 SC 1612; and *Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour)*, 1984 (4) SCC 635. Thus, it is settled law that the finding of fact must be recorded on proper appreciation of evidence on record and if there is no evidence to substantiate the same, it must be discarded as a whole.

41. In *Folkestone Corporation v. Brokemen*, 1914 Appeal Cases 338 at p. 367, the Court observed as under :--

'..... .An order made without any evidenceto support it, is. in truth, in my view made without jurisdiction and is, therefore, invalid at law.'

42. In view of the above, the impugned enquiry stands vitiated and all the consequential orders passed herein are nullity and cannot be given effect to. Thus, in view of the above, the following order is passed :--

(1) the enquiry report submitted on 30-9-98 (Annexure P-20) by the Judicial Enquiry Officer stands vitiated for non-compliance of the principles of natural justice and not giving proper opportunity to the petitioner to meet the charges;

(2) the impugned order dated 7-10-98 (Annexure P-18) being a consequential to the enquiry report is declared as null and void and becomes incapable of being enforced;

(3) if the respondents are still willing to proceed against petitioner, they shall supply all the documents asked by the petitioner within a period of three, weeks from today and the petitioner would be given a fair opportunity to submit her explanation to the charges within a period of two weeks thereafter;

(4) the Enquiry Officer shall proceed and conclude the enquiry within a period of four weeks thereafter by giving an opportunity to both the parties to adduce evidence and shall submit this report to the respondents;

(5) the respondents shall furnish a copy of the enquiry report to the petitioner within a period of two weeks thereafter and the petitioner may submit her explanation within a period of two weeks thereafter;

(6) the respondents, after considering the explanation, may pass an appropriate order;

(7) in the facts and circumstances of the case, it is desirable that a new Enquiry Officer be appointed for the reason that the officer, who conducted the inquiry earlier, does not seem to be acquainted with procedural fairness and judicial norms and there is an apprehension that he may err again in this respect; and

(8) the parties shall bear their own costs.