Before Anil Kshetarpal, J.

PDM RELIGIOUS AND EDUCATIONAL ASSOCIATION—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 8705 of 2021

May 5, 2021

Haryana Private University Act, 2006 – S.10 – University set up under Act is neither entitled to grant affiliation to any college or institution in or out of State nor it can award degrees through distance education.

Held that, it is apparent from careful reading of Section 10(1) of HPU Act, 2006 that a University set up under the Act is debarred to affiliate and open off shore campus. Sub-section 2 of Section 10 further clearly specified that the University shall not open any off shore campus, study centre & examination centre in and out of the State of Haryana and shall not offer any programme through distance education. Thus the University established under the HPU Act, 2006 is neither entitled to grant affiliation to any college or institution in or out of the State nor it can award degrees through distance education. Therefore, the only reason projected by the petitioners that the Trust/Association/University wants to expand its activities beyond the State of Haryana stands prohibited under Section 10.

(Para 21)

Chetan Mittal, Sr. Advocate
with V.K.Sachdeva, Advocate
for the petitioners

B.R.Mahajan, Advocate General, Haryana
with Samarth Sagar, Addl. AG, Haryana

ANIL KSHETARPAL, J.

(1) The Courts are expected to do substantive justice while making efforts to require the authorities, tribunals & quasi judicial tribunals to follow the procedure laid down. However, insistence to follow procedural law cannot be at the cost of substantive justice. More particularly, the Constitutional Courts are expected to lean towards doing justice in the real sense while making sincere endeavour to

follow the procedural law. However, the procedural law cannot be applied in a manner which defeats/delays the substantive justice. Most of the time, the justice delayed results in justice denied. Hence, all the authorities including the Courts and quasi-judicial tribunals are expected to make their sincere endeavour to do the substantive justice in an expeditious manner.

(2) In the considered opinion of the bench, the following question need adjudication:-

> (i) Whether Section 10 of the Haryana Private University Act 2006 debars the university established under it from expanding its activities beyond the borders of the Haryana State?
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> (ii) If only one view is possible, whether still it is mandatory for the court to set aside an order passed ininfraction of the principles of natural justice?

(3) This writ petition has been filed by the following three petitioners:-

> "(i). PDM Religious & Educational Association, having its Registered Office at Sector 3-A, Sarai Aurangabad, Bhadurgarh, District Jhajjar, Haryana, through its Authorized Person-Mrs. Bimla Singh, aged about 55 years.
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> (ii). P.D.Memorial Trust, having its Regd. Office at D-5/2, Sector 15, Rohini, Near Manav Chowk, New Delhi- 110089 and having its Admin Office at PDM Campus, Sector 3-A, Sarai Aurangabad, Bhadurgarh, District Jhajjar, Haryana, through Mr. J.S.Lather, on behalf of petitioner no.2.
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> (iii).PDM University, Sector 3-A, Sarai Aurangabad, Bhadurgarh, District Jhajjar-124507, Haryana, through its Chief Executive Officer."

(4) Through this writ petition, the petitioners pray for the following substantive reliefs:-

> (i) Issue a writ in the nature of Certiorari for quashing the impugned communication/ order dated 17.03.2021 (Annexure P-1) issued by Respondent no.2 whereby the permission dated 16.05.2019 (Annexure P-26) & Permission dated 09.10.2019 (Annexure P-29) permitting to change the Sponsoring Body of Petitioner No.3-PDM University

from Petitioner No.1-P.D.Memorial Religious & Educational Association to petitioner no.2 – P.D.Memorial Trust has been withdrawn by way of a totally non-speaking impugned communication/order dated 17.03.2021 (Annexure P-1), issued/passed without assigning any reasons for issuance of the impugned withdrawal letter and also without providing any opportunity of hearing to the petitioners and without considering the detailed replies/documents on record, and also ignoring the permission to seek the change of the sponsoring body from a Society registered in Haryana to Trust having All India jurisdiction was sought only to expand the activities of the University beyond the State of Haryana and also to avoid the confusions in the operational and interpretational issues regarding applicability of Haryana registration & Regulation of Societies Act, 2012 in view of repeal of the Societies Registration Act, 1860, in the State of Haryana, thus, the entire proceedings at the hands of Respondent No.2 being unconstitutional, manifestly unjust, arbitrary, devoid of principles of natural justice and fairness, in violation of *audi alteram partem*, and violative of the Constitutional guarantees under Constitution of India;

(ii) To issue a writ in the nature of Mandamus for issuing appropriate directions to Respondent No.1 and 2 to restore the Approval letter and 9.10.2019 whereby the permission to change the sponsoring body of Petitioner No.3- PDM University from Petitioner No.1 –P.D Memorial Religious & Educational Association to Petitioner No.2- P.D.Memorial Trust had been approved with all the conditions prescribed therein.

(iii) To restrain the Respondents from taking/continuing with any illegal actions against the Petitioners or their Trustees/members/employees/agents for seeking change of the sponsoring body of Petitioner No.3, during pendency of the instant petition and to stay of all the proceedings/any ongoing coercive action or other action, initiated or to be initiated or to be taken on the complaints/instructions /directions filed by the Respondents before any Court of law or before any Authorities including Police Authorities, in the interest of justice."

(5) The petitioners have also prayed for staying the operation of a communication dated 17.03.2021 as also for issuing interim directions to respondent no.1 to restrain it from taking/continuing with any illegal action against the petitioners/ their trustees/ members/employees/ agents during the pendency of the instant petition and to stay all proceedings/any ongoing coercive action/action initiated or to be initiated or to be taken on the complaints/instructions /directions filed by the respondent before any court of law or before any authority including police authorities in the interest of justice.

Facts:-

(6) Petitioner no.1- Society/Association was formed and got registered on 23.03.1995 under the Societies Registration Act, 1860. The State of Haryana enacted the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter referred to as the 'HRRS Act, 2012') vide Haryana Act no.1 of 2012. It was published in the Haryana Govt. Gazette Extra Legislative Supplement Part 1 vide notification dated 28.03.2012. As per Section 92 of the HRRS Act, 2012, the Society Registration Act, 1860, in its application to the territory of the State of Haryana, was repealed. Consequently, a new certificate of registration was issued to petitioner no.1-Society on 25.04.2013 under the provisions of HRRS Act, 2012. Petitioner no.2 is a Trust which was constituted by a trust deed date 03.06.2016. Thereafter, certain rectifications/supplementary deeds have been executed in the year 2016, 2017 and 2020.

(7) Whereas Petitioner no.3 is a University established under the Haryana Private Universities Act, 2006 (hereinafter referred to as the 'HPU Act, 2006'). Petitioner no.3 was permitted to be set up the university by making an amendment in the Schedule to the HPU Act, 2006, through a notification published on 14.01.2016.

(8) On 15.03.2018, petitioner no.1-Society submitted a request to change the sponsoring body of the PDM University-petitioner No.3. In fact, the word 'change of name' is not correct. The request was to substitute petitioner no.1 with petitioner no.2 as sponsoring body. After some correspondence, the petitioner's request was accepted and vide communication dated 16.05.2019, the Director, Higher Education, Haryana, permitted the petitioners to change the name of sponsoring body of PDM University, Bahadurgarh. The operative part of the communication dated 16.05.2019 reads as under:-

"It is informed that the State Government has

> allowed the request to change the name of Sponsoring Body of PDM University, Bahadurgarh from P.D Memorial Religious & Educational Association, Bahadurgarh to that of P.D.Memorial Trust, Bahadurgarh subject to the condition that all the assets and liabilities of the P.D.M.R.E.A with regard to P.D.M University will also vest in the P.D Memorial Trust, Bahadurgarh, and all necessary formalities with Registration Authority may also be completed by the Sponsoring Body in a stipulated time."

(9) Vide communication dated 09.10.2019, the Director, Higher Education, Haryana, once again wrote that the State Govt. has allowed the request to change the name of the sponsoring body. The operative part of the communication dated 09.10.2019 reads as under:-

> "It is informed that the State Government has allowed the request to change the name of Sponsoring Body of PDM University, Bahadurgarh from P.D Memorial Religious & Educational Association, Bahadurgarh to that of P.D.Memorial Trust, Bahadurgarh subject to the condition that all the assets and liabilities of the P.D.M.R.E.A with regard to PDM University will also vest in the P.D Memorial Trust, Bahadurgarh, and all necessary formalities with Registration Authority may also be completed by the Sponsoring Body in a stipulated time."

(10) It is also the pleaded case of the petitioners that there was a dispute amongst the family members, who were also members of the Management of the petitioners, which was resolved through a family settlement on 22.01.2020 and the State Registrar of Societies has already granted necessary approval regarding division of the Society of petitioner no. 1- **Prabhu Dayal Memorial Religious and Educational Institution under Section 51 (2) of HRRS Act, 2012 (Check from the writ petition)**. The Society, thereafter, passed a resolution on 08.03.2020. In the aforesaid meeting, apart from various other decisions, it was also decided that all the assets of petitioner no.1- Society shall vest in petitioner no.2 -PD Memorial Trust. The operative part of the resolution is extracted as under:-

> "6) In case the Society (PDMREA), is de- registered by the Competent Authority, all the assets and liabilities of PDMREA shall vest in the PD Memorial Trust and it will be entirely responsible for the discharge of allthe liabilities of PDMREA towards all the concerned Banks/ Financial

> Institutions/ Other persons etc. The Trust will also be responsible to the all Concerned Authorities for sending the required compliances to them, on time. Any further resolution in this regard required to be passed may also be passed at appropriate time."

(11) The grievance of the petitioner is that the permission granted on 13.5.2019 followed by a communication dated 09.10.2019 has now been withdrawn by the State Government vide its communication dated 17.03.2021, the operative part whereof reads as under:-

> "It is intimated that after re-examining and considering the matter the State Government has decided to withdraw the permission granted vide letter no. KW20/13- 2008 UNP (5) dated 13.05.2019 & 09.10.2019 to changethe name of the sponsoring body." The petitioners allege that such withdrawal is illegal.

Proceedings in the Court:-

(12) On 22.04.2021, when the writ petition came up for preliminary hearing, Sh. Samarth Sagar, Addl. AG, Haryana, entered appearance pursuant to supply of an advance copy of the writ petition and was requested to get complete instructions and assist the Court. Thereafter, the writ petition was adjourned to 26.04.2021. The case was taken on 27.04.2021, when on the request of Mr. Samarth Sagar, Addl. AG, Haryana, the case was adjourned to 29.04.2021. On 29.04.2021, Sh. B.R.Mahajan, Advocate General, Haryana, has entered appearance and with the consent of the learned counsel for the parties, arguments have been heard. The respondents-State has sent a short note of its written submissions with a copy in advance to the learned counsel forthe petitioners. Learned counsel representing the parties have been permitted to send their detailed written arguments apart from arguments at the time of hearing.

Stand of the State of Haryana

(13) In the written synopsis filed by the State of Haryana, it has been pointed out that the purpose for which the permission was taken by the petitioners is in violation of the HPU Act, 2006. Further, it is submitted that the Society borrowed huge amount from the Banks to establish the University. Neither the University nor the trust own any immovable property. The entire property, on which the University has come up, belongs to the Society. The Society and its

members are unable to pay their dues to the tune of approximately Rs.20 crores to the Banks. In order to frustrate the attempts of the Bank to realize their dues, this clever device of substitution of sponsoring body has been put forth in order to divert the funds. It has also been pointed out that the Deputy Superintendent of Police, (hereinafter referred to as Dy.S.P.) posted in Chief Minister's Flying Squad, on the orders, has conducted an inquiry into the complaint filed by Ms. Promila Singh, who was a founder member of the Society, Trust and the University. During the investigation, it came to light that the Society had taken loan from Yes Bank Limited and in September, 2020, unpaid recoverable amount from the Society was around Rs.17 crores. As per the agreement with the Bank, the petitioner no.1-Society had agreed to route its entire cash flow through Escrow Account maintained with Yes Bank Limited. As per the terms of the Escrow agreement, the Society undertook to issue instructions to its debtors to deposit, all the amount payable to the Society or its institutes, directly in the Escrow account. Subsequently, it came to the notice of the Bank that the Society or its institutes diverted funds generated from day to day activities. As per Yes Bank Limitedthe amount to be deposited in the Escrow account was diverted. The University and the Trust started dealing with Standard Chartered Bank Limited. On the request of Yes Bank Limited to Standard Chartered Bank for closure of account of the Society and for remission of the amount to the Yes Bank, these facts came to light. When the Standard Chartered Bank Limited contacted PDM University in this regard, they were informed by the University Official that the sponsoring body of the University has been changed with the approval of the Haryana Govt. and now they have no relation or connection with the previous sponsoring body, i.e. the society. It was also brought to the notice of the Court that the University has filed a writ petition in the Delhi High Court against the Standard Chartered Bank. On the report of the Dy.S.P., FIR No. 112/16.04.2020 under Section 120-B, 406, 420, 467, 468, 471 IPC has already been registered against the Chairman and other officials of the Society.

Statutory provisions:-

(14) Now, before this Bench proceeds further, it is appropriate to notice the relevant statutory provisions. The sponsoring body has been defined under Section 2 (v) of the HPU Act, 2006. Section 4 thereof lays down the procedure for submission of proposal for establishment of the University and its evaluation. Section 4 (2) (b) requires that the

sponsoring body is to disclose its financial resources. Section 9 provides that no University shall be established unless the sponsoring body is in possession of a minimum of 20 acres of land if the university is to be established outside the municipal limits or a minimum of 10acres within municipal limits whereas the requirement of the land within the limits of a municipal corporation is 5 acres. Section 10 provides that there shall be bar to affiliation and opening of off shore campus etc. in and out of the State. Section 11 provides that the sponsoring body shall establish an endowment fund for the University with a minimum amount of Rs.5 crores, which shall be kept in the form of Fixed Deposit Receipt in original in favour of the Higher Education Commissioner, Haryana.

(15) At this stage, it is appropriate to extract Section 2 (v), Section 9, 10 and 11 of the HPU Act of 2006:-

> "**Section 2(v)**"sponsoring body" in relation to a university means-
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> (i) a society registered under the Societies Registration Act, 1860 (Central Act 21 of 1860) ; or
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> (ii) any public trust; or
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> (iii) a company registered under section 25 of the Companies Act, 1956(Central Act 1 of 1956);
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> **Requirement of land.** –No university shall be established unless the sponsoring body is in possession of -
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> (i) a minimum of twenty acres of land outside the municipallimits ; or
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> (ii) a minimum of ten acres of land within the municipallimits;
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> [(iii) a minimum of five acres of land within the municipal corporation limits.]
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> [*Explanation.* - For the purposes of this section, "possession" means possession either by way of ownership or as a lessee having perpetual lease for a minimum periodof thirty years.]
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> **10. No power to affiliate any college or institution.** - Bar to affiliation and opening off shore campus etc.-(1) The university shall not admit any college or institution to the

privilege of affiliation.

(2) It shall not open any off campus, off shore campus, study centre and examination centre in or out of the State of Haryana and shall not offer any programme through distance education mode.]

11. Endowment fund. - [(1) The sponsoring body shall establish an endowment fund for the university with a minimum amount of five crores rupees which shall be pledged in the form of Fixed Deposit Receipt in original in favour of the Higher Education Commissioner, Haryana, Panchkula."

(16) Still further, the Legislative body of State of Haryana enacted the HRRS Act 2012, which was notified by the Government on 28.03.2012. Section 92 provides that the Societies Registration Act, 1860, in its application of territory of the State of Haryana is repealed. Sub section 3 of Section 92 provides that any Society registered at any place in the State of Haryana under the Societies Registration Act, 1860, shall be deemed to have been registered under the HRRS Act, 2012. Section 76 provides that the Society shall be a body corporate. Section 76 and 92 are extracted as under:-

"**Section 76. Society to be a Body Corporate -** A Society registered under the Act shall be a Body Corporate by the name under which it is registered and a common seal. The Society shall be entitled to acquire, hold and dispose of property,to enter into contracts, to institute and defend suits and other legal proceedings and to do all other things necessary in furtherance of its aims and objects, for which, it has been established.

92. Repeals and savings. - (1) The Societies Registration Act, 1860, in its application to the territorial jurisdiction of the State of Haryana is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act (including any order, rule, regulation, instructions, certificate or Bye-laws) in the exercise of any power conferred by or under the repealed Act shall be deemed to have been done or taken in the exercise of the powers conferred by corresponding provisions of the Act.

(3) Any Society registered at any place in the State of Haryana under the Societies Registration Act, 1860, shall be deemed to have been registered under the Act, and its principal office shall be deemed to be the registered office: Provided that

(i) the Memorandum and the Bye-laws of anysuch Society, to the extent these are repugnant to or inconsistent with any of the provisions of the Act and the rules made there under, shall be brought in conformity with the provisions of the Act within a period of two years from the commencement of the Act or within such further period as the Government may allow, and thereafter, to the extent of such repugnancy or inconsistency, be deemed to be void and of no effect;

(ii) any officer elected or appointed to and holding office immediately before the commencement of the Act shall continue to hold such office until the expiry of his term of office or until such office is lawfullyterminated;

(4) Nothing under the Act shall affect any right, privilege, obligation, liability or punishment underthe repealed Act:

Provided that any investigation or proceedings, including proceedings for dissolution, or the supersession of the Governing Body or appointment of an Administrator commenced before the coming into force of the Act, shall be continued and conducted in accordance with the provisionscontained in this Act."

Argument of Learned counsels:-

(17) This Bench has heard learned counsel for the parties at length and with their able assistance perused the paper book. Learned counsel for the petitioners has also sent synopsis alongwith the gist ofhis submissions which reads as under:-

1. "The Impugned Order dated 17.3.2021 is totally Non-Speaking order without giving any reasons for withdrawal of the Approval for Change of Sponsoring Body of the University, which had been granted after due consideration at highest levels in the State.

2. No copy of any enquiry Report has been provided to the Petitioners.

3. No Show Cause Notice has been issued prior to passing of the Impugned order.

4. No opportunity of Hearing has been provided to the Petitioners before passing the Impugned order.

5. No consideration of the documents submitted by the Petitioners.

6. The Formal Permission to change the Sponsoring Body of the University had been sought only to plan to extend the activities of the University to All India Level for the reasons that:

a) Petitioner No. 1- Society, the original Sponsoring Body of the University was earlier registered under The Societies Registration Act, 1860, a Central Act permitting operations on All India Basis. It had made the application for setting up of University in year 2008 which was ordered to have been established on 14.1.2016.

b) In the meanwhile, with the enactment of Haryana Registration and Regulation of Societies Act, 2012, and The Societies Registration Act 1860 stood repealed and the jurisdiction of the earlier Societies registered under The Societies Registration Act 1860 had been restricted to only State of Haryana in view of Section 92 of Haryana registration & Regulation of Societies Act,2012.

7. Petitioners have not violated the provisions of either the Haryana Private Universities Act, 2006 of Haryana Registration & Regulation of Societies Act, 2012 nor have committed any offence under Indian Penal Code.

8. The entire action is biased and is under the Influence of a Serving IAS Officer – Sh. Virender Lather, who even after the family settlement and Division of the Society, is indulging into filing of false complaints, through his wife and relations."

(18) Per contra, the learned Advocate General, Haryana, has submitted that petitioner no.1- Society was only permitted to change the name of the sponsoring body. He submitted that at that time, the officials of the State did not understand the evil design behind the petitioner's application for change of name of the sponsoring body. The facts came to light when a complaint was received. It was further

contended that all the assets are owned by the Society and neither the trust nor the University own any property. It is further contended that the University is trying to project that the University and the Trust wants to expand their activities beyond the jurisdiction of not only the State of Haryana but also beyond the borders of the country. He while drawing attention of court submits that such permission cannot be granted in view of Section 10 of the Act of 2006. He further submits that on investigation by the Dy.S.P., it came to light that the petitioners in order to divert the funds have taken these steps. He further submitted that there was neither any mala fide intention nor any undue influence by Sh. Virender Singh Lather, IAS.

Discussion:-

(19) Now there are two ways to decide this case. One is a easy path namely to set aside the order passed in infraction of the principles of natural justice and remit the matter back to the competent authority to pass a fresh order after complying the same. The other is to first examine the merits of the case and if the court is 'prima-facie' satisfied that the petitioners can have something to say which may result in different result, then remit the matter back to the competent authority. In the facts of the case, it would be more appropriate to follow the second path.

(20) This Bench is of the considered opinion that in the facts of the present case, the order in question is not required to be set aside merely on the ground of infringement of the principles of natural justice because this is not going to change the ultimate result. Still further, the petitioners cannot claim that they were not given any opportunity at all before passing the impugned order. The petitioners have themselves stated and annexed a notice given by the Dy.S.P. on 30.12.2020, Annexure P-40. The respondents replied alongwith certain documents vide communication dated 04.01.2021. Thereafter, a supplementary reply was also sent through a communication dated 13.01.2021 (Annexure P-2). The Dy.S.P. sought further information vide communication dated 22.01.2021 (Annexure P-44), however, the petitioners chose not to provide the information sought for. Still further, the petitioners themselves made a representation to the Chief Minister explaining their position vide a letter dated 24.02.2021 (Annexure P-46). Thus, the petitioners cannot claim that they were not given any opportunity before passing the impugned order.

(21) It is apparent from careful reading of Section 10(1) of HPU Act, 2006 that a University set up under the Act is debarred to affiliate

and open off shore campus. Sub-section 2 of Section 10 further clearly specified that the University shall not open any off shore campus, study centre & examination centre in and out of the State of Haryana and shall not offer any programme through distance education. Thus the University established under the HPU Act, 2006 is neither entitled to grant affiliation to any college or institution in or out of the State nor it can award degrees through distance education. Therefore, the only reason projected by the petitioners that the Trust/Association /University wants to expand its activities beyond the State of Haryana stands prohibited under Section 10.

(22) Still further, it has been projected before this Court that a Society registered under the HRRS Act, 2012, is debarred from carrying out its activities out of the State. In this connection, reference has been made to Section 1 and 92 of the Act. On careful reading of Section 1, it is apparent that it only provides that the HRRS Act, 2012, shall extend to the State of Haryana. It is nowhere provided that the Society registered under Act cannot carry out any activities beyond the State of Haryana. Similarly, Section 92 which has been extracted above also does not support the contention of the learned counsel representing the petitioners.

(23) Still further, it is undisputed that the entire property is owned by the Society. Neither the University nor the Trust is owner of any immovable property. It is also not in dispute that the Society as well the University have borrowed a huge sum from various Banks and as a collateral security, the property which is in name of the Society/association has been mortgaged. It is also not in dispute that when the Standard Chartered Bank called upon the petitioners No. 2 & 3 to explain, they took a stand that the University and the Trust has no connection with petitioner no.1- Association.

(24) Still further, there is no provision in the HPU Act, 2006, to change the sponsoring body. As per the scheme of the Act, the sponsoring body is required to own the land on which a University is proposed to be set up. As per Section 9, no University can be permitted to be established unless the sponsoring body is in possession of the land specified therein. From careful reading of the explanation to Section 9, it is apparent that the land should be possessed either by way of ownership or as a lessee having perpetual lease for a minimum period of 30 years. This is sina-qua-non for grant of permission to establish the University. Section 11 further provides that the sponsoring body shall establish an endowment fund for the University

with a minimum amount of Rs. 5 crores. Thus, the entire scheme of the Act requires that the sponsoring body should have sufficient financial resources. Once, the University is not required itself to possess or own any property, the sponsoring body in the context of HPU Act, 2006, becomes very important. The petitioners want to substitute the sponsoring body with the Trust which does not own any property. Although, it has been projected that the Society has passed a resolution to transfer the property into the Trust, however, the resolution is cleverly worded. The relevant portion of the resolution has already been extracted. The resolution provides that in case the Society is de-registered by the competent authority, all the assets and liabilities of the Society shall vest in the Trust. Thus, unless and until the Society is de-registered by the competent authority, the property continue to vest in the Society and not with the Trust. It is not the case of petitioner no.1 that it has applied for its de-registration. Still further, the Society is a body corporate as per Section 76 of the HRRS Act, 2012 and therefore, it is a legal entity.. As per the provisions of Transfer of Property Act, 1882, the transfer of property worth Rs.100/- or more can only be transferred from one person to another by a registered document on payment of requiredstamp duty. It may be noted here that it is not the case of the petitioners that any registered document has been executed. The reliance of the petitioners is only on the resolution to contend that the property stands transferred. During the course of arguments, learned counsel representing the petitioners was requested to explain as to how the property stands transferred. However, he responded that in view of the resolution, the decision has already been taken to transfer the property in the Trust. As noticed above, the resolution is conditional. Still further, as per the provisions of the Act there cannot be any transfer of immovable property by a resolution. It may be noted here that it is not the case of the petitioners that the Society itself has merged into the Trust.

(25) There is yet an another aspect of the matter. From careful reading of the permission granted, it is apparent that the permission has been granted to change the name of the sponsoring body of the University. No permission has been granted to substitute the sponsoring body. Thus, the decision taking authority never granted any permission to substitute the said sponsoring body. Learned counsel representing the petitioners admits that there is no provision in the Act to this effect.

(26) Keeping in view the aforesaid discussion, there is no other possible decision. Hence, no permission can be granted to the

Association or the University to substitute the sponsoring body. In these circumstances, even if, there is infraction of the principles of natural justice, still this Bench does not find it appropriate to set aside the order passed and direct re-decision which would be an exercise in futility. In any case, this Bench has granted sufficient opportunity of hearing to the petitioners in this regard, but no convincing contention was put forward.

(27) Before this Bench proceeds to evaluate the correctness of the arguments addressed by the learned counsel for the parties, it is important to note that first five contentions of the learned counsel representing the petitioners are with regard to violation of various facets of the principles of natural justice as is understood in the broader sense. The Courts have made a tactical shift to hold that it is not necessary to set aside an order on finding that there is a violation of the principles of natural justice. After examining the principles of natural justice, the Hon'ble Supreme Court in ***Chairman, Board of Mining*** versus ***Ramjee***[1] held as under:-

> "1. If the jurisprudence of remedies were understood and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous way it did, in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation of a regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a writ of certiorari.
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> **13.** The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Regulation 26, in the circumstances, is complete. Natural justice is no unruly

[1] (1977) 2 SCC 256

> horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision- maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt — that is the conscience of the matter."

(28) Thereafter, the Supreme Court examined this aspect in various other judgments. However, in ***Dharam Pal Satya Pal Limited*** versus ***Deputy Commissioner Central Excise Guhati and others*** [2] held as under:-

> **20.** Natural justice is an expression of English Common Law. Natural justice is not a single theory—it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called "*naturalist*" approach to the phrase "*natural justice*" and is related to "*moral naturalism*". Moral naturalism captures the essence of commonsense morality—that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.
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> **21.** In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in thedecision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (*sic* an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind

[2] (2015)8 SCC 519

only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "*natural justice*". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (*i*) rule against bias i.e. *nemo debet esse judex in propria sua causa*; and (*ii*) opportunity of being heard to the party concerned i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is ofrecent origin. It is the duty to give reasons in support of decision, namely, passing of a "*reasoned order*". xxxxxxxxxxx---------- xxxxxxxxxxxxxx xxxxxxxxxxxxx

38. But that is not the end of the matter. While the law on the principle of *audi alteram partem* has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but evencross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise,in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full- fledged opportunity is envisaged under the statutory rulesas well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post- decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of *procedural fairness*, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing "*would make no difference*"—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch* v. *Aberdeen Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that: (WLR p. 1595 : All ER p. 1294)

"… A breach of procedure … cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."

Relying on these comments, Brandon L.J. opined in *Cinnamond* v. *British Airports Authority* [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that: (WLR p. 593 : All ER p. 377)

"… no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."

In such situations, fair procedures appear to serve no purpose since the "*right*" result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in

> those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the orderhas to be decided on the touchstone of "*prejudice*". The ultimate test is always the same viz. the test of prejudiceor the test of fair hearing.

(29) Recently, the aforesaid principles have been reiterated and rather given expanded meaning by a three Judges Bench of the Hon'ble Supreme Court in ***State of UP*** versus ***Sudhir Kumar Singh and others***[3]. In para 39, the Hon'ble Supreme Court summed up its conclusion, which is extracted as under:-

> 39 An analysis of the aforesaid judgments thus reveals:(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
>
> (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
>
> (3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in casesin which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
>
> (4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case,

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and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the nonobservance of natural justice. In view discussion already made in the foregoing paragraphs, contentions no. 1-5 stand rejected. Answer to arguments noticed under Clause 6 lies in para 9.3 above.

(30) As regards argument under contention no.7, it may be noted that the question here :-

(i). Whether the petitioners have violated the provisions of HPU Act, 2006 or HRRS Act, 2012.

(ii). Whether the order passed by the authority while granting permission to change the name of the sponsoring body was appropriate or not in the facts and circumstances of the present case.

(31) Petitioner No.3-University is a creation of the HPU Act, 2006. In the absence of the provision in the Act to substitute the sponsoring body, no permission could have been granted. Still further, as per the stand of the petitioners, they plan to expand its activities beyond the border of the state which, if permitted, shall result in infringement of Section 10 of the HPU Act 2006. Thus, there is no substance in the first part of contention no.7. As regards second part of the contention, it may noted here that the petitioner intend to violate the provision of the Act. If the petitioners wish to expand their activities, as is being projected, then they are free to apply for recognition/registering the university as per guidelines laid down by University Grants Commission/ or any other competent authority for establishing a university of national level.

(32) Last argument of the learned counsel representing the petitioners is with regard to influence of a serving IAS Officer, who was previously a member of the Society. The complaint has also been filed by his wife. It may be noted here that from the perusal of the documents, this Bench does not find that the order under question has been passed under the influence of the officer. The Chief Minister of the State, after getting investigation conducted through an officer from his own Flying Squad, has taken a conscious decision. Learned

Advocate General, Haryana, has produced a photocopy of the decision taken at the highest level. It is not established on record that the IAS Officer is in a position to influence the decision at the highest level. The IAS officer was earlier a member of the Haryana Civil Services and has recently been inducted into IAS.

(33) As regards, the argument of the learned counsel qua non-supply of the copy of the inquiry report conducted by the Dy.S.P., it may be noticed that the aforesaid inquiry was an informal inquiry to prima facie find out the substance in the allegations made by Mrs. Promila Singh. In any case, learned counsel for the petitioners failed to convince the Court with regard to any prejudice caused on account of non-supply of the copy of the inquiry report. Still further, before registration of an FIR, the accused is not required to supply a copy of informal inquiry conducted. In any case, now a copy of the inquiry report has been supplied to the learned counsel for the petitioners in advance alongwith the written submissions filed by the State of Haryana and thereafter, an opportunity to furnish the explanation has been given, however, apart from what has been pleaded in the writ petition and the written submissions filed, no further point was put forth. Therefore, there is no substance in the argument.

(34) Keeping in view the aforesaid discussion, this Bench does not find it appropriate to issue the writ, as prayed for. Hence, the petition is dismissed.

Ritambra Rishi