IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 15574 OF 2025

ABC ...Petitioner

Versus

1. Internal Complaints Committee

Constituted under the POSH Act, 2013 by Akasa Air

2. Akasa Air, Having Headquarters at Urmi Estate, Tower A, 12th Floor, 95 Ganpatrao Kadam Marg, Lower Parel (W)

3. XYZ ...Respondents

WITH

INTERIM APPLICATION NO. 8040 OF 2025

Ms. Ankita Singhania, a/w Burzin Somandy, Swati Chaudhary, Yukti Mitta, Ariana Somandy i/by Tejaswita Nalwade (Somandy), for the Petitioner in WPST/15574/2025 and for the Applicant in IA/8040/2025.

Ms. Payel Chattarjee, a/w Suchita Choudhry and Pranay Tuteja i/b Tri Legal, for the Respondent Nos.1 and 2.

Mr. Rajendra Mishra, a/w Saurabh Mishra, for Respondent No.3.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 4th SEPTEMBER, 2025
PRONOUNCED ON: 3rd NOVEMBER, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Articles 226 and 227 of the Constitution of India the petitioner seeks to quash and set aside

the final report dated 12th February, 2025, submitted by Internal Complaints Committee ("ICC") ("R1") constituted by respondent No.2 to inquire into the complaint made by respondent No.3 and a direction to respondent No.1 to conduct a fresh inquiry by adhering to the principles of natural justice and affording an effective opportunity of hearing to the petitioner.

3. The petitioner has also preferred an interim application seeking stay to the implementation of the recommendations under the impugned final report till the final disposal of the petition.

4. A preliminary affidavit-in-reply has been filed on behalf of respondent No.2 challenging, *inter alia,* the very tenability of the petition on the ground that a writ petition under Article 226 of the Constitution of India is not maintainable against the respondents, who are private entities and that the petitioner has an efficacious statutory remedy of preferring an appeal before the Appellate Authority under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the POSH Act"). Respondent No.2 has also contested the petition on merits.

5. In the backdrop of the nature of the resistance put-forth by the respondents on the aspect of the maintainability of the petition, it was considered appropriate to hear the petition itself alongwith the application for interim relief. If the Court comes to the conclusion that the petition itself is not maintainable, an elaborate consideration on the merits of the matter and the application for interim relief may not warranted. Accordingly, the parties were put to notice and they were heard at some length.

Background:

6. Shorn of superfluities, the background facts can be stated as under:

6.1 Respondent No.2 is a private Airline. The petitioner has been employed with respondent No.2 as Captain. Respondent No.3 was appointed as a trainee captain. The petitioner was assigned the duty to oversee the training of respondent No.3.

6.2 On 24th November, 2024, respondent No.3 made a complaint against the petitioner purportedly highlighting a list of instances of behaviour of, and comments made by, the petitioner which caused discomfort and desecrated the professional learning environment for respondent No.3.

6.3 ICC (R1) commenced the inquiry. A copy of the complaint was served on the petitioner. The latter gave his written response to ICC (R1). ICC (R1) examined the complainant (R3), the petitioner and three witnesses namely PK(W1), AG(W2) and DF(W3).

6.4 After appraisal of the evidence and material, a preliminary inquiry report was prepared and the findings were shared with the complainant (R3) and the petitioner, on 20th January, 2025. The petitioner contested the findings recorded by ICC (R1). Recording that the petitioner was unable to make or substantiate any new representation and all the points raised by the petitioner were already considered, ICC (R1), by its final order dated 12th February, 2025, made, *inter alia,* the following recommendations:

> (a) A final warning letter be issued to the petitioner explaining the importance of making all colleagues feel comfortable, and always conducting oneself professionally with peers, colleagues and trainees at all times including at work place and that the petitioner must facilitate a professional and mature work environment, reinforcing the values of respect and dignity for the individual.

(b) The petitioner shall be required to undergo the learning module of POSH as a refresher training.

(c) The petitioner shall not be eligible for any upgrades for a period of six months from the date of the said report.

(d) The petitioner's Employee Leisure Travel benefits shall stand revoked for a period of 45 days from the date of issuance of the final warning letter.

7. Being aggrieved, purportedly more by the procedure adopted by respondent No.1, the petitioner has invoked the writ jurisdiction.

Grounds of challenge:

8. The principal grounds of challenge are that respondent No.1 was legally bound to conduct its inquiry in strict adherence to the principles of natural justice as envisaged under Rule 7 of the POSH Rules, 2013, procedural fairness and statutory obligations. However, the inquiry conducted by respondent No.1 was marred by severe procedural violations. Firstly, there was complete denial of petitioner's right to cross-examine the witnesses on whose statements findings were based by respondent No.1. The denial of the opportunity to cross-examine the witnesses constituted breach of fundamental principles of natural justice and fairness. In substance, the

principle of *audi alteram partem* was flagrantly violated. Secondly, the petitioner was not afforded an opportunity of personal hearing and the entire inquiry was conducted solely on basis of written submissions. Thirdly, the impugned recommendations lack the essential qualities of objective reasoning, analysis and consideration of the relevant material. The contentions raised by the complainant were blindly accepted and the points raised by the petitioner were unjustifiably discarded without any consideration. The petitioner was also denied the opportunity to examine a witness in his defence. It was further alleged that there was breach of confidentiality.

9. In the preliminary affidavit-in-reply, respondent No.2 employer has in addition to raising the issue of maintainability of the writ petition controverted the aforesaid contentions.

10. I have heard Ms. Ankita Singhania, the learned Counsel for the petitioner, Ms. Payel Chatterjee, the learned Counsel for respondent Nos.1 and 2 and, Mr. Mishra, the learned Counsel for respondent No.3.

Submissions:

11. Ms. Singhania, the learned Counsel for the petitioner, submitted that the inquiry and the resultant recommendations

suffer from the vice of most flagrant violation of the principles of natural justice and the fundamental principles of judicial process. Denial of the opportunity to the cross-examine the complainant's witness was the most invidious infraction of the basic right of the petitioner to test the truthfulness and veracity of the allegations.

12. Attention of the Court was invited to the communication addressed by the petitioner styled as "an interim reply to the e-mail dated 1st December, 2024", wherein the petitioner had called upon respondent No.1 to arrange for the cross-examination of the complainant alongwith the witnesses in order to prove the innocence of the petitioner. By the said communication, the petitioner had also requested to provide personal hearing. Yet, neither the petitioner was provided an opportunity to cross-examine the complainant and the witnesses, nor personal hearing was given. In view of the breach of fundamental tenets of natural justice, Ms. Singhania would urge, there is no embargo to exercise the writ jurisdiction despite the existence of a statutory remedy. Therefore, the challenge to the maintainability of the petition does not deserve any consideration.

13. To buttress the submission that, in the cases where the impugned order has been passed in violation of the principles of natural justice, the rule of self-imposed restraint in exercising writ jurisdiction, where an alternate remedy is available, does not preclude the Court from exercising the writ jurisdiction, Ms. Singhania placed reliance on a three-Judge Bench judgment of the Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and others***[1]***.***

14. Ms. Singhania would submit that the opportunity to cross-examine the witnesses is the most valuable right of a delinquent. Denial of opportunity to cross-examine the witnesses and personal hearing completely vitiated the inquiry and the findings rendered in such inquiry. Reliance was placed on a judgment of Delhi High Court in the case of ***Prof. Bidyug Chakraborty vs. Delhi University and ors.***[2]***.***

15. Ms. Singhania further urged, while exercising the writ jurisdiction, the Court must satisfy itself that the inquiry into the complaint of sexual harassment by the Committee has been conducted in terms of the governing rules and the concerned

1 (2021) 9 Supreme Court Cases 657.

2 WP(C) No.8226/2007 dtd.29/5/2009.

employee had a reasonable opportunity to vindicate his position and establish his innocence. To this end, reliance was placed on the judgment of the Supreme Court in the case of ***Aureliano Fernandes vs. State of Goa and others***[3]

16. Lastly, Ms. Singhania submitted that, the fact that respondent Nos.1 to 3 are private parties cannot be the sole determinant on the aspect of the maintainability of the writ petition. If it can be demonstrated that respondent Nos.1 and 2 were discharging public duties, and they did owe a duty and obligation to the public, involving a public law element, the writ petition is maintainable even against private entities. To buttress this submission, Ms. Singhania placed reliance on a judgment of the Karnataka High Court in the case of ***Ms. X vs. the Internal Complaints Committee***[4]***.***

17. In opposition to this, Ms. Chatterjee, the learned Counsel for respondent Nos.1 and 2, stoutly submitted that the petition is not maintainable on the count of availability of a statutory efficacious remedy of appeal and the respondents being not amenable to the writ jurisdiction. On the first count, Ms. Chatterjee submitted that, all the grounds of infraction of procedure can be legitimately urged before, and considered by,

3 (2024) 1 Supreme Court Cases 632.

4 WP/8127/2019, dtd.30/9/2024.

the Appellate Authority in an appeal against the impugned recommendations. Thus, the prayer to quash and set aside the impugned recommendations cannot be entertained in the face of a clear statutory remedy.

18. It was submitted that this Court has consistently taken a view that in the face of availability of an appellate remedy under Section 18 of the POSH Act, the Court should refrain from entertaining the writ petition. Reliance was placed on an order dated 20th February, 2024, passed in the case of ***Andrea Pereira vs. State of Goa through The Chief Secretary and ors.***[5]**,** wherein it was enunciated that in the absence of special reasons justifying the departure from the self-imposed restriction, the party invoking the writ jurisdiction must be relegated to the appellate remedy.

19. On the second count of the respondents not being amenable to writ jurisdiction, Ms. Chatterjee would urge that even where the writ petition was maintainable against one of the respondents, when it was filed, but, subsequently, the said respondent ceased to answer the description of the State or the instrumentality of the State, the writ jurisdiction cannot be exercised. A very strong reliance was placed by Ms. Chatterjee

---

5 WP/167/2024, dtd.28/2/2024.

on a judgment of the Supreme Court in the case of ***R. S. Madireddy and another vs. Union of India and others***[6].

20. In the said case, the question that arose for consideration was, whether the writ petitions, though maintainable on the date of the institution, continued to be maintainable as on the date those petitions were finally heard in view of the privatization of the Air India Limited. A Division Bench of this Court has held that with the privatization of the Air India Ltd., the jurisdiction of the High Court under Article 226 of the Constitution of India to issue a writ to Air India Ltd., particularly in its role as an employer did not subsist and, thus, the writ petitions were disposed. After adverting to the previous pronouncements of the Supreme Court and the various High Court, the Supreme Court held that once Air India Ltd. ceased to be covered by the definition of the State within the meaning of Article 12 of the Constitution of India, it could not have been subjected to the writ jurisdiction under Article 226 of the Constitution of India.

21. Ms. Chatterjee further submitted that, reliance on the decision of the Karnataka High Court in the case of ***Ms. X*** (supra) is of no assistance to the petitioner as, in that case, the

---

6 2024 SCC OnLine SC 965.

petitioner had approached the High Court seeking a writ to the Internal Complaints Committee to inquire into the petitioner's compliant in accordance with the provisions of POSH Act as the respondents therein had taken a stand that they lacked jurisdiction to inquire into the complaint, as the driver against whom the complaint was made was not the employee of OLA.

22. Ms. Chatterjee further submitted that, as the final recommendations made by respondent No.1 (extracted above) have been given effect to, at this stage, there is no propriety in entertaining the petition.

23. Mr. Mishra, the learned Counsel for respondent No.3 – complainant, supplemented the submissions of Ms. Chatterjee.

24. Ms. Singhania joined the issue by canvassing a submission that, in this petition, the petitioner has not assailed the impugned recommendations on merits. It is the gross procedural irregularities in the conduct of the inquiry and the submission of final recommendations that furnishes a ground to invoke the writ jurisdiction. It was submitted that the petitioner has suffered irretrievable prejudice on account of the recommendations made by respondent No.1 to debar the petitioner from upgrade. The communication of the report has marred the chances of the petitioner from being appointed

to one of the prestigious positions. Therefore, the recommendations cannot be said to be innocuous on account of the passage of time stipulated therein.

Consideration:

Maintainability of the writ petition against the private entities:

25. Undoubtedly, the language of Article 226 is of wide import. If the words, "to any person or authority" are literally construed, then writ can be issued even against private persons. Likewise, if the term, "for any other purposes" is interpreted literally, the writ court would be within its right in issuing a writ for any purpose whosoever, even for resolving the private disputes. However, these expressions have not been construed in such literal fashion. By a catena of decisions, it is firmly crystallized that a writ will lie against the State or the instrumentality of the State, and a private entity only when such private entity performs a public function or discharges a public duty involving a public law element.

26. In the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others vs. V. R. Rudani and others***[7], the Supreme Court enunciated the import of the term "authority" as under:

---

7 (1989) 2 Supreme Court Cases 691.

> "20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."
>
> (emphasis supplied)

27. The Supreme Court has emphasised that the words, "any person or authority" used in Article 226 are not confined only to statutory authorities or instrumentality of the State. They may cover any other person or body performing public duty. The form of the body is not as relevant as the nature of the duty imposed on the entity.

28. In the case of ***Federal Bank Ltd. vs. Sagar Thomas and others***[8]**,** the Supreme Court after adverting to the previous pronouncements culled out the entities against whom writ petition under Article 226 of the Constitution of India may be entertained. The observations in paragraph 18 read as under:

> "18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run

---

8 (2003) 10 Supreme Court Cases 733.

> substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function."
>
> (emphasis supplied)

29. In the case of ***St. Mary's Education Society and another vs. Rajendra Prasad Bhargava and others***[9]***,*** the Supreme Court exposited the proposition as under:

> "75.1 An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.
>
> (emphasis supplied)

30. In the case at hand, incontrovertibly respondent No.2, the employer of the petitioner, is a private enterprise, or for that matter, none of the respondents answer the description of State or the instrumentality of the State under Article 12 of the Constitution of India. The question which thus wrenches to the fore is, whether in the facts of the case, a writ would lie against respondent Nos.1 and 2 on the premise that they were performing a public function or discharging the public duty. The thrust of the submission of Ms. Singhania was that ICC (R1) was discharging a statutory duty involving a public law element

---

9 (2023) 4 Supreme Court Cases 498.

and, therefore, the actions of respondent No.1, in particular, are amenable to writ jurisdiction.

31. In the case of ***Ms. X*** (supra), on which reliance was placed by Ms. Singhania, the Karnataka High Court held that in the light of the statutory obligation cast on the employer to constitute the Internal Complaints Committee for inquiring into the complaint of sexual harassment and taking further actions under the provisions of POSH Act, the employer did owe a duty or obligation towards the public at large. Thus, the employer and the ICC constituted by the employer cannot be heard to say that they were not discharging any public duty involving, "public law element", making them amenable to Article 226 of the Constitution of India.

32. The aforesaid decision is required to be appreciated in the backdrop of the facts of the said case. The petition arose, as noted above, on account of refusal on the part of the employer and ICC constituted by the employer to inquire into the complaint of sexual harassment made by the petitioner therein against the driver, on the ground that they lacked jurisdiction to inquire into the complaint as the driver was not the "employee" of OLA. The aforesaid enunciation of law, therefore, cannot be

construed *de hors* the factual backdrop in which it was rendered.

33. In my considered view, a distinction would be required to be drawn in cases where the ICC refuses to discharge statutory duty to inquire into the complaint of sexual harassment in accordance with the provisions of the POSH Act and Rules therein and thereby fails to discharge its duty and obligation to the public at large created by a statutory regime, and the cases where the ICC allegedly conducts the inquiry not in conformity with the provisions of the Act and the rules and the principles of natural justice. In the later case, the infraction of the procedure or the transgression of the jurisdiction, or for that matter, the perversity in the findings, would be the matters which can be legitimately raised before the Appellate Authority. The legality, propriety and correctness of the findings recorded by ICC would be examined by the Appellate Authority. An incorrect finding or defect in procedure would not necessarily amount to failure to discharge a public duty. At best, that would be an error within the jurisdiction. Thus, I am not inclined to accede to the submissions on behalf of the petitioner that, in the facts of the case, the writ petition under Article 226

of the Constitution of India would be maintainable against respondent No.1 as it was discharging a public duty.

Maintainability of the petition in the face of alternate remedy:

34. This leads me to the principal ground of challenge to the impugned order on the count of failure to adhere to the principles of natural justice. Under the scheme of POSH Act, the recommendation made by the ICC is subject to an appeal under Section 18 of the said Act before the Appellate Authority constituted thereunder. Existence of an alternate remedy, it is well settled, is a self-imposed restraint on the exercise of the writ jurisdiction. It is a well settled position in law that, despite, the availability of an alternate remedy, the writ Court is not denuded of the power of judicial review and may exercise the plenary writ jurisdiction. The situations in which a writ court may exercise the jurisdiction, notwithstanding the availability of an alternate remedy are also settled by a series of judgments. In the case of ***Ghanashyam Mishra and Sons*** (supra), on which reliance was placed by Ms. Singhania, the Supreme Court after referring to the previous pronouncements, including the decision of the Supreme Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks***[10]***,*** enunciated that it

---

10 (1998) 8 SCC 1.

has been consistently held that the alternate remedy would not operate as a bar in at least three contingencies:

> "(1) where the writ petition has been filed for the enforcement of any of the Fundamental Rights;
>
> (2) where there has been a violation of the principle of natural justice; and
>
> (3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

35. At the same time, the Court cannot loose sight of the fact that, ordinarily, the rule of existence of statutory remedy is required to be adhered to as it is considered to be a rule of policy, convenience and discretion. In cases, where a statutory appeal is provided, especially in the very enactment under which rights and obligations have been created and a machinery is provided for enforcement of those rights and obligation, with a provision of appeal, the writ court would be slow in exercising the plenary jurisdiction, side-stepping the appellate forum.

36. In the case of ***Radha Krishan Industries vs. State of Himachal Pradesh and others***[11]**,** the Supreme Court summarized the principles which emerge in the matter of exercise of writ jurisdiction despite existence of the alternate remedy, as under:

> "27. The principles of law which emerge are that :

---

11 (2021) 6 Supreme Court Cases 771.

27.1 The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

27.2 The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

27.3 Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

27.4 An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

27.6 In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(emphasis supplied)

37. The Supreme Court has emphasised that when a right is created by a statute, which itself prescribes a remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution as the rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

38. Keeping in view the aforesaid principles which govern the exercise of writ jurisdiction, in the face of an express statutory remedy of appeal, reverting to the facts of the case, the substance of the grievance of the petitioner is that the petitioner was not provided an effective opportunity of hearing as there was breach of fundamental principles of natural justice, primarily, on the ground that the petitioner was not provided opportunity to cross-examine the complainant and the witnesses and personal oral hearing was not given to the petitioner.

39. Section 11 of the POSH Act makes provisions in relation to inquiry into the complaint. The second proviso to sub-section (1) of Section 11 provides that, where both parties are employed, the parties shall during the course of inquiry be given an opportunity of being heard and copy of the finding shall be made available to both the parties enabling them to make representation against the findings before the Committee. It would be contextually relevant to note that Rule 7 of POSH Rule, 2013 regulates manner of inquiry into the complaint. Sub-rule (2) of Rule 7 mandates that a copy of the complaint be served on the respondent, within a period of seven working days. Sub-rule (3) of Rule 7 provides that the respondent shall

file his reply to the complaint alongwith his list of documents and names and addresses of witnesses within a period of ten days. Sub-rule (4) mandates that the complaints committee shall make inquiry into the complaint in accordance with the principles of natural justice. Sub-rule (6) of Rule 7 debars the appearance of the legal practitioner to represent a party. Under the POSH Rules, 2013, there is no provision for recording of evidence in a formal manner. Conversely, there is no prohibition for recording the evidence by subjecting the witnesses to cross-examine.

40. A conjoint reading of the provisions contained in Section 11 of the POSH Act and Rule 7 of the POSH Rules would indicate that the Complaints Committee is duty bound to give an opportunity of hearing to the parties. It is enjoined to adhere to the principles of natural justice. However, the Complaints Committee is not tethered by the strict rules of procedure and evidence. The imperativeness of this regime of the Complaints Committee being unshackled by the strict rules of procedure or evidence becomes evident, if the object of the constitution of the Complaints Committee and the nature of the function to be performed by the Complaints Committee is kept in view.

41. An inquiry by the Complaints Committee is essentially a fact finding inquiry. In the case of ***Nisha Priya Bhatia vs. Union of India and another***[12]**,** the Supreme Court enunciated that the legal machinery to deal with the complaint of sexual harassment at work place is well delineated with the enactment of POSH Act and Rules framed thereunder. The inquiry under POSH Act is a separate inquiry of a fact-finding nature. Post the conduct of the fact-finding inquiry under the POSH Act, the matter goes before the department for a department inquiry under the relevant departmental rules and, accordingly, action follows.

42. A denial of right of cross-examination need not necessarily cause such prejudice as to vitiate the inquiry, in every case. Where there was no contest on the basic facts, absence of formal opportunity of cross-examination *per se* may not vitiate the decision. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of ***K. L. Tripathi vs. SBI***[13]**,** wherein the Supreme Court enunciated the law as under:

> "29. We are of the opinion that Mr Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect

---

12 (2020) 13 Supreme Court Cases 56.

13 (1984) 1 SCC 43.

of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a Statutory Corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in On Justice by J.R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase *"audi alteram partem"* which was first formulated by St. Augustine (*De Duabus Animabus, XIV, 22 J.P. Migne, PL. 42, 110*).

.....

32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

> 33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases."
>
> (emphasis supplied)

43. On the aforesaid touchstone, re-adverting to the facts of the case, on a *prima facie* appraisal of the matter, (being cognizant of the fact that the petitioner has a statutory remedy of appeal, and with a view to obviate expression of opinion on the merits of the matter) this Court finds that the petitioner had objected to the findings at Items 1, 4, 5, 13, 14 and 15 of Part III of the Preliminary Findings Report, and the petitioner had admitted the incidents, as such, referred to in Items 1, 4, 5 and 13. The ICC held the incident referred to in Item 14, was proved on the basis of the statement of the witnesses. Whereas qua Item 15, it was recorded that the allegation was inconclusive.

44. The situation which, thus, emerges is that the basic facts referred to in Items 1, 4, 5 and 13 were not disputed though the intent of the petitioner and the inferences drawn by the Committee may be put in contest. In these circumstances, this Court is of the considered view that the denial of the opportunity to cross-examine the witnesses did not cause such

prejudice as would warrant jettisoning away of the inquiry overboard, in exercise of the writ jurisdiction.

45. Likewise, the ground that, no oral hearing was given to the petitioner and, therefore, there was denial of an effective opportunity of hearing, cannot be countenanced unreservedly. It is not obligatory that, in every case, the aggrieved person must be provided oral hearing. In the case at hand, there is material to indicate that the petitioner was served with the preliminary findings and given an opportunity to make representation against those preliminary findings. A useful reference can be made to the judgment of the Supreme Court in the case of ***Dharampal Satyapal Ltd. vs. Dy. Comm. Of Central Excise, Gauhati and Ors.***[14]. The observations in paragraph 38 are instructive and, hence, extracted below:

> "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 even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by

14 (2015) 8 SCC 519.

way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as 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."

(emphasis supplied)

46. In the case of ***State of Uttar Pradesh vs. Sudhir Kumar Singh and others***[15]**,** a three-Judge Bench of the Supreme Court exhaustively dealt with the effect of violation of the principles of natural justice and summarized the principles as under:

"42.1 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.

42.1 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.

42.3 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 cases in 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.

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

---

15 (2021)19 SCC 706.

> 42.5 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 non-observance of natural justice."
>
> (emphasis supplied)

47. The conspectus of aforesaid consideration is that the facts of the case are not such as would warrant the exercise of writ jurisdiction, despite the availability of the statutory remedy of appeal. Resultantly, the petition deserves to be dismissed.

48. Since the petitioner was *bona fide* prosecuting this petition, the Court considers it appropriate to direct that, in the event the petitioner files an appeal within a period of four weeks from today, the time spent by the petitioner in prosecuting this petition may be accounted for in case the question of limitation arises.

49. Hence, the following order:

: O R D E R :

(i) The petition stands dismissed.

(ii) In the event the petitioner files an appeal under Section 18 of the POSH Act, within a period of four weeks from today, the time spent by the petitioner in prosecuting this petition may be accounted for, if the question of limitation arises.

(iii) By way of abundant caution, it is clarified that the aforesaid consideration is confined to determine the tenability of the petition and this Court may not be understood to have expressed any opinion of the merits of the matter and, in the event, an appeal is preferred, all contentions of all the parties would be open for consideration by the Appellate Authority, and the Appellate Authority shall decide the appeal on its own merits and in accordance with law, without being influenced by any of the observations made hereinabove.

(iv) In view of disposal of the writ petition, IA/8040/2025 also stands disposed.

[N. J. JAMADAR, J.]