IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No. 14616 of 2021

An application under Articles 226 and 227 of the Constitution of India.

Dr. Kanishka Das ..... Petitioner

-Versus-

Union of India
and others ..... Opp. Parties

For Petitioner: - Mr. Subir Palit
Senior Advocate

For Opp. Parties: - Mr. P.K. Parhi, DSGI
Mr. B.S.Rayaguru, CGC
Mr. S.K. Sarangi
Sr. Advocate
(for intervenor)
Mr. D. Lenka, Advocate
(for O.P. Nos.2 and 3)

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing: 25.09.2024 Date of Judgment: 04.10.2024

S.K. SAHOO, J. In this writ petition, the petitioner Dr. Kanishka Das seeks to challenge the order dated 12.03.2021 passed by the

learned Central Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter, 'the Tribunal') in O.A. No.129 of 2021 under Annexure-10 whereby the learned Tribunal while declining to interfere with the show-cause notice dated 04.02.2021, observed that the authorities considering the relevancy and necessity of the documents sought for by the petitioner in Annexure-A/12, may supply the same to him as per Rules/law. Further, the petitioner has also challenged the show-cause notice dated 04.02.2021 issued by the opposite party no.2 as well as the Fact Finding Committee (for short, 'the F.F.C.') report dated 23.09.2020 under Annexure-9 as illegal, arbitrary and in violation of Central Civil Service (Classification, Control and Appeal) Rules, 1965 (hereinafter 'CCS (CC & A) Rules').

2. The factual matrix of the case in hand is that the petitioner, who is working as Professor in the Department of Paediatrics Surgery in AIIMS, Bhubaneswar, joined as Professor in the said Department in March 2018. After his joining, the petitioner along with other members of the Department, began to organize the academic activities and patient care protocols, whereby a schedule was finalized and responsibilities were divided among the members of the Department, but one Dr. Manoj K. Mohanty, who is one of the members of the

Department, insisted on two separate units from the very day of his joining and because of such misunderstanding, there was hitch between the petitioner and Dr. Manoj K. Mohanty, but during the early December 2018, the said Department was divided into two units. The petitioner vide his e-mail dated 05.12.2018 under Annexure-3 series had cautioned the administration that such division of the Department would lead to fragmented protocols and confusion in training of the students, which would adversely impact patient care and ultimately the reputation of the institute. After the bifurcation of the unit, the petitioner as the Head of the Department continued to take clinical and teaching rounds, but the patient care appeared to be grossly inappropriate/non-standard/dangerous. According to the petitioner, at the instance of Dr. Manoj K. Mohanty, complaints were lodged before the administration by the patient attendants. While the matter stood thus, the opposite party no.2 issued order dated 15.05.2020 (Annexure-8) wherein out of the two bifurcated units of the Department of Paediatrics Surgery, one unit was headed by the petitioner and another unit was headed by Dr. Manoj K. Mohanty and both the incumbents were directed to report independently to the Director for all administrative and academic matters of their respective units in

place of the petitioner as the Head of the Department. Challenging such bifurcation, the petitioner moved the Tribunal in O.A. No. 451 of 2020, which is still subjudice.

While the matter stood thus, a F.F.C. under the Chairmanship of Dr. Sandeep Agarwala, Professor, Department of Paediatrics Surgery, AIIMS, New Delhi, was constituted to ascertain the facts regarding the complaints submitted by some faculty members about the alleged unprofessional conduct of the petitioner. The F.F.C. submitted its report on 23.09.2020 basing on which the show-cause notice dated 04.02.2021 under Annexure-9 was issued to the petitioner.

Challenging such show-cause notice along with the report of the F.F.C., the petitioner moved the learned Tribunal in O.A. No.129 of 2021. After hearing the learned counsel for both the parties, the learned Tribunal vide impugned order dated 12.03.2021 under Annexure-10, while declining to interfere with the show-cause notice as well as the report of the F.F.C., disposed of the Original Application observing that the opposite party no.2 may supply the documents to the petitioner as sought for in Annexure-A/12 considering the relevancy and necessity of the documents. The said order of the learned Tribunal dated 12.03.2021 under Annexure-10, inter alia, show-cause notice

issued by the opposite party no.2 as well as the F.F.C. report under Annexure-9 are under challenge in this writ petition.

3. Pursuant to the notice, the opposite parties nos.1 to 3 have filed preliminary counter affidavit stating therein that the writ petition is not maintainable in the eyes of law on the ground that the same has been filed basing on the misrepresentation of facts without any substantive grounds or point of law entitling the petitioner to get the relief. While denying the averments made by the petitioner regarding the e-mail communications vide Annexures-1 to 5, it is stated that those communications were relating to internal administration and day-to-day activities of the department and the same were no way related to the issues involved in the writ petition. It is further stated that vide office order dated 05.11.2018 issued by the Medical Superintendent, AIIMS, Bhubaneswar, two other departments, namely, Department of ENT & Department of Neurosurgery were also bifurcated into two units along with Department of Paediatrics Surgery. The allegation of the petitioner regarding the conscious effort by the administration and Dr. Manoj K. Mohanty (Head Unit-II of the Department) to isolate him from the entire department by spreading false rumours and fabricated stories were also denied. It is stated that since the petitioner had

raised question with regard to the validity of the appointment of Dr. Manoj K. Mohanty as Additional Professor in the Department of Paediatrics Surgery, but he has not impleaded Dr. Manoj K. Mohanty as a party to the proceeding, thus, the petitioner has no locus standi to challenge the same. It is also stated that the appointment of Dr. Manoj K. Mohanty was made with due adherence to the Recruitment Rules prescribing qualification and teaching experience for Faculty Posts and Dr. Manoj K. Mohanty was declared provisionally eligible basing on the teaching experience certificate submitted by him in the Faculty Recruitment of 2015 at AIIMS, Bhubaneswar. It is further stated that the Standing Selection Committee, as had been constituted by the then Minister of Health & Family Welfare, Govt. of India, being the then President of the Institute, verified the Teaching Experience Certificate and recommended Dr. Manoj K. Mohanty as eligible to be appointed as Additional Professor in Department of Paediatrics Surgery. It is also stated that such appointment of Dr. Manoj K. Mohanty as Additional Professor of the Department of Paediatrics Surgery at AIIMS, Bhubaneswar has been challenged before this Court in W.P.(C) (PIL) No.16885 of 2021 as well as before the Tribunal in O.A. No. 451 of 2020, which are pending for adjudication. It is further stated that keeping in view

Regulation 11 of AIIMS Regulations, 1999, the Director, opposite party no.2 has the power to bifurcate the Department of Paediatrics Surgery for better and smooth administration of the Department.

It is further stated in the counter affidavit that basing on some complaints made by the faculty members of the Department of Paediatrics Surgery and other Departments about the unprofessional conduct of the petitioner, F.F.C. was constituted under the Chairmanship of Prof. Sandeep Agarwala, Department of Paediatrics Surgery, AIIMS, New Delhi and other members vide office orders dated 15.05.2020 and 22.05.2020 under Annexure-C/2 series. It is stated that the F.F.C. was an administrative mechanism to ascertain the facts of the matter to help the Competent Authority to take some decisions. The F.F.C. inquiry is not an inquiry under the CCS (CC & A) Rules and therefore, the provisions of CCS (CC & A) Rules will not be applicable. It is further stated that the F.F.C. submitted its report on 23.09.2020 to the competent authority after ascertaining the facts in issue and thereby made recommendations and actions to be taken for smooth management of the Department of Paediatrics Surgery in AIIMS, Bhubaneswar. It is further stated that the Governing Body also noted that the above findings of

the F.F.C. about the petitioner are very serious in nature and needs initiation of disciplinary action in accordance with the Rules. The Governing Body accepted the report of the F.F.C. as the preliminary inquiry report and approved to issue show-cause notice to the petitioner by the Competent Authority. The petitioner submitted his reply to the show-cause notice dated 04.02.2021 and the Disciplinary Authority considered the reply of the petitioner and finding the same to be unsatisfactory, directed for issuance of article of charges along with statement of imputations to the petitioner. The petitioner also submitted his written statement of defence to the charges framed against him in the disciplinary proceeding. The Disciplinary Authority directed for inquiry into the imputation of charges against the petitioner, with appointment of Inquiry Officer and Presenting Officer under Rule 14 of CCS (CC & A) Rules. The Disciplinary Proceeding is pending for further inquiry, before the Inquiring Authority at present in respect of the charges imputed against the petitioner. It is further stated that since the petitioner has not approached this Court with clean hands and has suppressed the material facts with ulterior motive, the petitioner is not entitled to get any relief.

4. In reply to the counter affidavit, the petitioner has filed rejoinder affidavit reiterating that the bifurcation of other departments, namely, E.N.T and Neurosurgery was effected without any formal, prior communication from the Director at that point of time. Thereafter, the Department of Neurosurgery has been remerged into a single department on 20.01.2020 since the said bifurcation was a failed and unsuccessful experiment. The averment regarding non-joinder of Dr. Manoj K. Mohanty as a party to the writ petition, the petitioner has stated that he did not specifically challenge the appointment of Dr. Manoj K. Mohanty in this writ petition, but the issue of validity of appointment of Dr. Manoj K. Mohanty has been alluded in the writ petition with the sole intention to point out that the petitioner being the seniormost has been removed from the post of HoD and that Dr. Manoj K. Mohanty did not have requisite teaching experience/eligibility as per the prescribed norms. It is further stated in the rejoinder affidavit that the JLN Hospital and Research Centre, Bhilai clearly denied having issued an experience certificate to Dr. Manoj K. Mohanty, while he produced a certificate given by one Dr. Ashok Ghorpade, Director (M&HS and Coordinator of DNB studies), probably given in his personal capacity, apparently at the individual's request as

stated therein. It is further stated that the said centre did not comprise of a medical college or a department of Paediatrics Surgery or run a post-graduate course in Paediatrics Surgery and thus, the said experience does not fulfill the teaching experience required for the post of Addl. Prof., Paediatrics Surgery. The petitioner has further stated in the rejoinder affidavit that the F.F.C. has ignored his repeated requests for supply of documents, statements recorded and opportunity to cross-examine the witnesses whose statements have been recorded and an opportunity to cross-examine such witnesses as requested by him in para-7 of his reply dated 01.02.2022 to the charge sheet. It is further stated that the requests of the petitioner for an authenticated copy of the F.F.C. report signed by all the members was not provided to him, instead the petitioner was supplied with a copy signed by only three members which is conspicuous in nature due to absence of signature of the Chairman. It is further stated that the show-cause notice reads like a statement of imputation/indictment against the petitioner and clearly exhibits a completely closed mind of the authorities even at the stage of issuance of show-cause.

5. Mr. Subir Palit, learned Senior Advocate appearing for the petitioner contended that the show-cause notice issued by the opposite party no.2 is bad in the eyes of law as the same has been done based on findings recorded by the F.F.C. A mere reading of the show-cause would demonstrate that the same is a facsimile of the F.F.C. report and it would also reflect that the mind of the authority was already closed at that stage. The very language in which the show-cause has been worded clearly establishes that the authorities were biased against the petitioner from the very inception and formation of F.F.C. The issuance of show-cause was only a mere formality to bring home the pre-judged guilt of the petitioner. He further challenged the constitution of the F.F.C. and the report furnished by it on the ground that the same was in contravention of the CCS (CC & A) Rules. It is his submission that F.F.C. had recommended disciplinary action against the petitioner, which is undisputedly beyond the scope of the F.F.C., pursuant to which the disciplinary authority framed charges against the petitioner and issued show-cause notice to him. It is argued that it was no part of the mandate of the F.F.C. to recommend a punishment on punitive measure against the petitioner. Learned Senior Counsel further argued that the petitioner has not been granted an

opportunity to cross-examine the witnesses whose statements were recorded by the F.F.C. The learned counsel placed reliance in the case of **Oryx Fisheries Pvt. Ltd. -Vrs.- Union of India and others reported in (2010) 13 Supreme Court Cases 427** and argued that the post-decisional hearing would not provide adequate remedy to the petitioner in the present case. He placed reliance in the case of **H.L. Trehan and others -Vrs.- Union of India and others reported in (1989) 1 Supreme Court Cases 764** wherein it has been held that the authority who embarks upon a post-decisional hearing would naturally proceed with a closed mind and there will be no reasonable opportunity or opportunity at all for representation at such a stage. While concluding his argument, Mr. Palit argued that since the impugned show-cause notice does not stand the test of law, as a natural consequence, the entire proceedings arising out of it stand vitiated and in support of such contention, he has placed reliance on the decision of the Hon'ble Supreme Court in the case of **State of Punjab -Vrs.- Davinder Pal Singh Bhullar reported in (2011) 14 Supreme Court Cases 770**.

6. Mr. B.S. Rayaguru, learned Central Government Counsel, on the other hand, submitted that the F.F.C. is an administrative mechanism to ascertain facts before initiating a

full-scale inquiry against an employee and the same has not been contemplated under the CCS (CC & A) Rules. He argued that the F.F.C. not being an entity under the said Rules, its inquiry and report cannot be said to be against the Rules. Learned counsel also refuted the contention of the petitioner that the disciplinary action has been initiated against the petitioner by the opposite party no.2 without obtaining necessary permission from the appropriate authority and contended that necessary permission has been obtained and only thereupon, the show-cause notice has been issued to the petitioner and thus, the same cannot be said to be illegal, arbitrary or mala fide. He further supported the impugned order passed by the learned Tribunal which granted opportunity to the petitioner to call for necessary documents but the petitioner has tactfully not availed the opportunity so as to linger the proceeding. He concluded his argument with the submission that the writ petition being devoid of merits should be dismissed particularly when the examination of witnesses in the inquiry is at a concluding stage.

7. Adverting to the contentions raised by the learned counsel for the respective parties, the questions that cropped up for consideration are as follows:

(i) Whether the 'Show-Cause Notice' issued to the petitioner is justified?

(ii) Whether the report of the F.F.C. is in violation of CCS (CC & A) Rules and hence, deserves to be quashed?

Whether the 'Show-Cause Notice' issued to the petitioner is justified?:

7-A. It is a settled position of law that Writ Courts must show a reasonable degree of restraint while interfering at the stage of 'show-cause'. The literal meaning of the term 'show-cause', as used in the legal parlance, may be considered for better adjudication of the case in hand. According to **Black's Law Dictionary**, the term means *"against a rule nisi, an order, decree, execution, etc., is to appear as directed, and present to the court such reasons and considerations as one has to offer why it should not be confirmed, take effect, be executed, or as the case may be."* From the dictionary meaning, it is deducible that when a 'show-cause notice' is issued to someone, he is called upon to show reasons as to why a proposed action should not be taken against him. In other words, show-cause notice requires the noticee to render an explanation against a proposed action/sanction/punishment. Needless to say, the noticee, more often than not, is required to furnish his response based upon and considering the facts which have been alleged against him

and also which he believes are in his favour. Issuance of show-cause notice is therefore the first step in the staircase of a proposed disciplinary action and not the whole staircase itself. This first step involves complex questions of disputed facts and as is ingrained in the constitutional as well as service jurisprudence, the Writ Courts are not the appropriate forums to adjudicate questions of facts, much less penetrating into the domain of disputed facts.

The scope of interference at the nascent stage of show-cause has lucidly been discussed in the case of **Union of India -Vrs.- VICCO Laboratories reported in (2007) 13 Supreme Court Cases 270**, wherein while speaking for the Bench of the Hon'ble Supreme Court, Hon'ble Dr. Justice Arijit Pasayat (as His Lordship then was) held as follows:

> "31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings

> before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."
>
> **[Emphasis supplied]**

In the case of **State of U.P. -Vrs.- Brahm Datt Sharma reported in (1987) 2 Supreme Court Cases 179**, the Hon'ble Supreme Court, while explaining the scope of interference at the stage of 'show-cause', held as follows:

> "9. The High Court was not justified in quashing the show-cause notice. When a show-cause notice is issued to a Government Servant under a statutory provision calling upon him to show-cause, ordinarily the Government Servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have

> been issued palpably without any authority of law. The purpose of issuing show-cause notice is to afford opportunity of hearing to the Government Servant and once cause is shown, it is open to the Government to consider the matter in the light of the facts and submissions placed by the Government Servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature, the High Court in our opinion ought not have interfered with the show-cause notice."

There is no dearth of precedents reiterating the aforesaid stance where it has been categorically held that Writ Courts should be slow in disturbing the regular procedure and seizing statutory powers from the competent authorities. However, it is clarified that this Court is not incapacitated to interfere when it is pleaded, supported by clear and undisputed prima facie facts, that the very issuance of show-cause is per se arbitrary and is of mala fide character or has been issued by an authority which is not empowered to do the same under the law. In a very rare and exceptional case, the High Court can quash a show-cause notice if it is found to be wholly without jurisdiction. A show-cause notice does not give rise to any cause of action as it does not amount to an adverse order which affects the rights

of any party. It is quite possible that, after considering the reply to the show-cause notice, the authority concerned may drop the proceedings and/or hold that the allegations are not established. A show-cause notice does not infringe the rights of anyone. It is only when a final order imposing some punishment, or otherwise adversely affecting a party, is passed that the said party can be said to have any grievance. Of course, where the threat of a prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the Court's protection. If, however, the authority has the power in law to issue the show-cause notice, it would not be open to the person, asked to show-cause, to approach the Court under Article 226 of the Constitution at the stage of notice. The jurisdiction of the High Court, under Article 226 of the Constitution, should not be permitted to be invoked in order to challenge a show-cause notice, unless accepting the facts in the show-cause notice to be correct, the show-cause notice is, ex facie, without jurisdiction, i.e., the notice is ex-facie a 'nullity' or 'non-est' in the eyes of the law for absolute want of jurisdiction of the authority to even investigate into the facts or totally 'without jurisdiction' in the traditional sense of that expression i.e., even the commencement or initiation of the proceedings, on

the face of it and without anything more, is totally unauthorised. In all other cases, it is only appropriate that the party shows cause before the authority concerned and takes up the objection regarding jurisdiction therein. Mere assertion by the petitioner that a notice is without jurisdiction would not suffice. It should, prima facie, be established to be so. Where factual adjudication is necessary, interference is ordinarily ruled out. Whether the show-cause notice is founded on any legal premise is a jurisdictional issue which can be urged by the recipient of the notice and such issues can also be, initially, adjudicated by the authority issuing the very notice before the aggrieved can approach the Court.

Though the learned counsel for the petitioner placed reliance in the case of **Oryx Fisheries Pvt. Ltd.** (*supra*), but in the said decision, it has been held that a show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. At the stage of show-cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. The show-cause notice cannot be read hyper technically and it is to be read reasonably. An opportunity to deny his guilt and

establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

A disciplinary authority has to keep a broad mind while issuing show-cause notice. No doubt at the stage of issuance of show-cause notice, the delinquent employee should not be given an impression that he is going to be indicted or a finding of guilt has been pre-determined.

It appears that the issuance of show-cause notice to the petitioner is based on the findings of F.F.C. Report and thus, it cannot be said to be arbitrary or mala fide in character. There is nothing on record that the authority lacks jurisdiction to issue the show-cause notice. The Governing Body of the AIIMS, Bhubaneswar accepted the F.F.C. report as the preliminary

enquiry report and approved to issue show-cause notice to the petitioner by the competent authority.

In the present case, though it has been alleged by the petitioner that the show-cause notice is an exact facsimile of the F.F.C. report, but it is not the case of the petitioner that an opportunity of hearing has been denied to him to counter the charges made against him. The F.F.C. is an administrative mechanism which is usually constituted for ascertaining the facts and it is on the basis of these facts that a show-cause notice is issued. Therefore, if there are some similarities in the report of the F.F.C. and the show-cause notice, there is hardly any reason to doubt the impartiality of the disciplinary authority and the F.F.C. being genus and the issuance of show-cause notice being the species, it is but normal to have some analogous character.

Thus, we are of the humble view that there is no such illegality in the issuance of show-cause notice to the petitioner and the authority is quite justified in issuing such notice on the basis of the report of the F.F.C.

Whether the report of the F.F.C. is in violation of CCS (CC & A) Rules and hence, deserves to be quashed?:

7-B. The office order dated 15.05.2020 reads as follows:-

"

OFFICE ORDER

Subject: Fact Finding Committee to look into the complaints of the some faculty members of the Department of Paediatrics Surgery and other Departments about alleged professional conduct of the Prof. Kanishka Das as the HoD, Paediatrics Surgery.

The President, AIIMS, Bhubaneswar has constituted the following Fact Finding Committee to ascertain the facts of several complaints submitted by some faculty members of the Department of Paediatrics Surgery & other Departments about alleged unprofessional conduct of Dr. Kanishka Das as the HoD of the Department of Paediatrics Surgery and to examine whether Dr. Das has failed to provide guidance and leadership expected of an Head of the Department besides a cohesiveness and team spirit that is expected in any Department.

1. Chairman- Prof. Sandeep Agarwala

   Dept. of Paediatrics Surgery
   AIIMS, New Delhi

2. Member- Prof. Madhabananda Kar

   HoD, Dept. of Surgical Oncology
   AIIMS, Bhubaneswar

3. Member-Convenor-

   Prof. Sachidanand Mohanty

   Medical Superintendent
   AIIMS, Bhubaneswar

The F.F.C. shall take into consideration all the complaints as available in the file and

summon any one in AIIMS, Bhubaneswar connected with the case and record their evidences as felt necessary. The F.F.C. may also recommend about the measures to be taken for future smooth management of the Department of Paediatric Surgery.

The F.F.C. shall submit its report at the earliest.

(P.K. Ray)
Dy. Director (Admn.)
AIIMS, Bhubaneswar."

Therefore, the F.F.C. was authorised not only to consider all the available complaints, record the evidence of any one connected with the case as would be felt necessary, but also to recommend about the measures to be taken for future smooth management of the Department of Paediatrics Surgery.

The report of the F.F.C. indicates that the petitioner sighting high moral and ethical grounds has preached the fundamental working ethos and has been making rounds and counseling patients and their attendants even of the other units. He has made adverse comments and written alternate treatment plans in the patients' case records. He has tried to impose clinical decisions regarding surgery and management on other faculty members. He has failed to acknowledge other faculty members during the department's data presentations in the National Academic Forums including patient data. He has also failed to

provide leadership in research and created impediments in the research work of the faculty and thesis being guided by them which was already in progress before he joined as HoD. He has failed to provide leadership and guidance to the Department members, thereby hampering the Department and faculty members progress. He has felt that all these bickering and insubordination by the faculty members of his Department was at the behest of Dr. Manoj K. Mohanty so also the AIIMS Administration, without realizing that it was his actions that had created a poor working condition with an atmosphere distorts and lack of confidence. His attitude and method of functioning was not conducive to teaching, learning and over-all progress of either the Department or the Departments' faculty members. The F.F.C. came to hold that it would be detrimental for the Department if the petitioner continued as HoD or even has continued interaction with other faculty members. Accordingly, the F.F.C. suggested various alternative actions against the petitioner in the interest of peace in the Department and its continued growth which are as follows:

> (i) It seems that the petitioner is still on deputation from his parent department at St. Johnes in Bangalore. If this is a fact, he may be sent back to his Institution;

(ii) He may be removed from leadership of the Department and the Director takes over as the administrative HoD for five years and senior most faculty carries out the day-to-day functioning of the Department.

He be allowed to continue in the Department, but he needs to be isolated. He could be allocated restricted privileges like some time in the OPD, a few beds and a OT/or some operating time to work as Paideitric Surgeon. He should be debarred from attending any rounds or any teaching activities or common departmental activities;

(iii) He may be removed from headship of the Department and the second senior most faculty be made the Head of the Department for five years and give this time to the petitioner for introspection and rectification of his nature.

In this time, the petitioner be allowed to continue in the Department but he needs to be isolated. He could be allocated restricted privileges like some time in the OPD, a few bed and a OT/or some operating time to work as Paediatrics Surgeon. He should be debarred from attending any rounds or any teaching activity or common departmental activities.

Even with this arrangement, if he will not change his stubbornness and continue to jeopardize the growth and create a poor working

atmosphere in the Department, then he should be debarred from the headship permanently;

(iv) He may be altogether removed from the faculty position at AIIMS, Bhubaneswar now or he may be given an option to resign and leave.

After receipt of the report of the F.F.C., the Governing Body of the AIIMS, Bhubaneswar took a serious note of such findings on various alleged misconduct of the petitioner and emphasized to ensure discipline and expected work standards from all the faculty members of the Institute. The Governing Body accepted the F.F.C. report as the preliminary enquiry report and approved to issue show-cause notice to the petitioner by the competent authority as to why disciplinary action as per the provisions of CCS (CC & A) Rules would not be taken against him based on the report of the F.F.C. and to give the petitioner a reasonable opportunity of defence as principles of natural justice. Accordingly, show-cause notice was issued to the petitioner.

8. There should be not even an iota of confusion between a 'disciplinary inquiry' and a 'fact-finding inquiry'. Both are neither analogous nor can be used interchangeably. A fact-finding inquiry, as the name suggests, is conducted to ascertain the facts of the matter. It is not a full-fledged disciplinary

inquiry. Only after gathering the facts and after getting a report from the fact-finding committee, if the said facts require initiation of a disciplinary action, then only a disciplinary proceeding is undertaken. By its very nature, a fact-finding inquiry is not of penal character nor does it prescribe any penalty. Otiose to mention, a fact-finding inquiry is not an 'inquiry' contemplated under Rule 14 of the CCS (CC & A) Rules. For better understanding, it may further be stated that report of the F.F.C. provides a prima facie factual underpinning on the basis of which the disciplinary authority considers either to initiate a further 'disciplinary inquiry' as provided under Rule 14 of the CCS (CC & A) Rules for imposing major penalties or to drop the proceedings all together. The fact-finding inquiry is at best can be said be in the nature of a 'preliminary inquiry'. The following observations made by the Hon'ble Supreme Court in the case **Nirmala J. Jhala -Vrs.- State of Gujarat reported in (2013) 4 Supreme Court Cases 301** can be relied upon to underline the true purport of a preliminary inquiry:

> "47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

> 48. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."

In the case of **Kendriya Vidyalaya Sangathan -Vrs.- Arunkumar Madhavrao Sinddhaye reported in (2007) 1 Supreme Court Cases 283**, the Hon'ble Supreme Court set aside the order of a High Court which had treated a preliminary inquiry/fact-finding inquiry as a disciplinary inquiry and held as follows:

> "17. As shown above, the nature of enquiry conducted against the respondent was merely a preliminary or fact-finding enquiry and no formal full-scale departmental enquiry had been conducted against the respondent. In fact, the enquiry officer had himself recommended that disciplinary action be taken against the respondent. However, the authorities chose not to hold a disciplinary enquiry against the respondent and did not serve him with any

> article of charges or take any further steps in that regard. Instead they chose to exercise power under the terms and conditions of the appointment order. The termination order is wholly innocuous and does not cast any stigma upon the respondent nor it visits him with any evil consequences. The High Court seems to have proceeded on a wholly wrong basis and has treated the enquiry which was only a preliminary or fact-finding enquiry into a regular disciplinary enquiry, which was not the case here. In these circumstances, the judgment of the High Court is wholly erroneous in law and has to be set aside."

Therefore, the very nature of fact-finding inquiry makes it permissible to be held ex-parte and even without granting any opportunity of hearing to the concerned employee, which is imperative only in a disciplinary inquiry. In the case of **Champaklal Chimanlal Shah -Vrs.- Union of India reported in 1963 SCC OnLine SC 42**, the Hon'ble Supreme Court held as follows:

> "13…In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the

enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even as such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purpose of inflicting one of the three major punishments that the government servant gets the protection of Article 311 and all the rights that that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that Article."

[**Emphasis supplied**]

In view of the foregoing discussions and the law laid down by the aforesaid precedents, we are of the view that the contention of the petitioner that the constitution so also the report of the F.F.C. is contrary to the CCS (CC & A) Rules

deserves no merit. It is a settled position that a fact-finding inquiry is an administrative mechanism instituted for gathering and ascertaining the relevant and correct state of affairs. The nature of such inquiry is preliminary and not penal. Thus, given the nature of the inquiry, there is no need for granting even hearing to the petitioner, much less any opportunity for cross-examination. It is only at the stage of inquiry that is contemplated under Rule 14 of the CCS (CC & A) Rules that an opportunity of hearing has to be granted. As the F.F.C. merely produced the facts for consideration before the disciplinary authority, the ball is sent to the court of such authority to take an appropriate call and to grant reasonable opportunity of hearing to the petitioner.

Mr. Palit, learned Senior Advocate contended that post-decisional hearing will render the entire proceeding inimical to the petitioner. To substantiate his contention, he has relied upon the decision of the Hon'ble Supreme Court in the case of **H.L. Trehan** (supra). However, such reliance on the judgment as well as the contention itself is misplaced. In the instant case, there is no question of post-decisional hearing as the disciplinary authority had given adequate opportunity to the petitioner to submit his show-cause and also put forward his stance by way of

cross-examination of the witnesses. When the show-cause of the petitioner has been taken on record before the Inquiring Authority so also reasonable opportunity of hearing and cross-examination have been given to him, it will be vague to hold that the authority has made the petitioner defenceless stripping him out of armour and proceeding in the inquiry ex parte.

In the case of **Davinder Pal Singh** (supra), it has been held that if the initial action is not in consonance with law, all subsequent and consequential proceedings would fall though for the reason that illegality strikes at the root of the order. However, in the present case, we are of the humble view that the show-cause notice is not a tainted one only because it was issued basing upon the facts discovered in the report of the F.F.C. As we have already held that the show-cause notice is just and proper in the eyes of law, the bedrock of the proceeding is quite strong and therefore, there is no question of falling of the super structure. Thus, the disciplinary proceeding and the consequent inquiry are good in the eyes of law.

9. When a query is made during hearing to the learned counsel for the petitioner as to whether in terms of the impugned order, the petitioner pursued supply of any documents from the opposite party, the answer was in negative.

An affidavit has been filed by the AIIMS which is dated 20.08.2024 wherein it is indicated that the status of the enquiry is at regular hearing stage. In the said enquiry, out of 22 witnesses from both the sides, 13 witnesses (i.e. 7 witnesses from the prosecution side and 6 witnesses from defence side) have already adduced their evidence before the Inquiring Authority. Examination in-chief/cross-examination of all 13 witnesses have already been carried out and that the evidence of remaining 9 witnesses would be carried out on 21.08.2024 as fixed by the Inquiring Authority. Learned counsel for opposite parties nos. 2 and 3 by filing a synopsis with date chart on 25.09.2024 indicated that out of total number of 22 witnesses from both the sides, 21 witnesses have already been examined and cross-examined and last witness could not appear and requested the Inquiring Authority to submit his evidence in writing, which is under consideration. The request of the petitioner for re-examination of two witnesses is also pending for consideration by the Inquiring Authority. The learned counsel for the petitioner has not disputed this position. Thus, it seems that the inquiry is almost at the concluding stage.

10. In view of the foregoing discussions, we do not find any infirmity in the show-cause notice dated 04.02.2021 so also

any illegality in the impugned order dated 12.03.2021 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack under Annexure-10 and therefore, it would not be appropriate and incumbent to disturb the statutory procedure and to superficially interfere at the fag end of the disciplinary proceeding.

11. Accordingly, the writ petition being devoid of merits, stands dismissed. It is made clear that we have not expressed any opinion as to whether the petitioner has been provided full opportunity in the entire disciplinary proceeding or on the merits of the disciplinary proceeding and the findings of such proceeding shall obviously be based on the oral as well as documentary evidence adduced by the respective parties.

With the dismissal of the writ petition, the interim orders passed earlier stand vacated.

…..
(S.K. Sahoo, J.)

Chittaranjan Dash, J. I agree.

…….
(**Chittaranjan Dash, J.**)

Orissa High Court, Cuttack
The 4th October 2024/PKSahoo