IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8613 OF 2023

Arun Nanasaheb Kadam & Ors. ….. Petitioners

Vs.

The State of Maharashtra & Ors. ….. Respondents

Mr. V. D. Hon, Senior Advocate i/b. Mr. A. V. Hon a/w. Mr. A. D. Sonkawade for the petitioners
Mr. V. D. Sapkal, Senior Advocate, Special Counsel with Mr. A. B. Girase, Government Pleader for respondent No.1 – State
Mr. S. B. Deshpande, Senior Advocate i/b. J. P. Legal Associates a/w. Mr. Swapnil B. Joshi for respondent Nos.2 and 3.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & KISHORE C. SANT, J.

RESERVED ON : AUGUST 26, 2024
PRONOUNCED ON : AUGUST 30, 2024

JUDGMENT (PER : CHIEF JUSTICE)

(A) CHALLENGE:

1. By instituting the proceedings of this petition, filed under Article 226 of the Constitution of India, the petitioners who are elected President and Vice President of Maharashtra Nursing Council (hereinafter referred to as the **Council**) and other elected and/or nominated members, challenge the validity of the impugned Notification dated 5th July 2023, issued by the State

Government in the Department of Medical Education and Drugs whereby, the Government has dissolved the Council and has appointed one Dr. Anant Shingare, Assistant Professor, G.G.M.C. and Sir J.J. Group of Hospital, Mumbai as its Administrator, till the new Council is constituted in the prescribed manner.

(B) BACKGROUND FACTS:

2. The term of the last elected Council was to end in December 2018 and accordingly, the elections for constitution of the Council was due in the year 2018, however, since the Council was not being constituted by election, the issue was taken up before this Court at Mumbai and in Notice of Motion No.613 of 2018 in writ petition No.2005 of 2012, this Court passed an order directing State Government to take action strictly in conformity with the provisions of the Maharashtra Nurses Act, 1966 (hereinafter referred to as the **Act of 1966**). The Court, by passing the said order on 12th December 2018, further made it clear that the action of the State Government of appointment of an Administrator to the Council was not examined; neither it would be understood that the Court had given the Government one year's time to hold elections. The Court expressed its expectation in the said order that the State Government will take appropriate steps in

accordance with law so as to ensure that the Council is constituted under Section 3 of the Act of 1966, as expeditiously as possible and a suitable mechanism is put in place to administer the affairs and discharge of the functions and duties of the Council, in the intervening period. The said order, dated 12th December 2018 passed by this Court at Bombay is extracted hereinbelow:

> *"19. We further direct the State Government to take action strictly in conformity with the provisions of the Act, 1966. It is made clear that we have neither examined, much less approved, the proposed action of the State of appointment of an administrator nor it be understood that we have given the State Government one year's time to hold the elections. We expect the State Government to take appropriate steps in accordance with the provisions of the Act, 1966 so as to ensure that the Council is constituted, under Section 3 of the Act, as expeditiously as possible and a suitable mechanism is put in place to administer the affairs, and discharge the functions and duties of the Council, in the intervening. Period."*

3. It appears that even after the said directions given by the Court in its order dated 12th December 2018, since the Council was not being constituted by election, the Maharashtra State Nursing Association filed writ petition No.7663 of 2019 before this Court which was finally disposed of by a coordinate Bench by means of an order dated 25th June 2019, wherein after noticing the earlier order passed by the Court on 12th December 2018, the Court observed that the State Government would be bound by the order dated 12th December 2018. The Court further observed in the said order that if the respondents were not adhering to the

said order, then further steps would be taken by the parties in the said Notice of Motion. The operative portion of the order dated 25th June 2019 passed by this Court in writ petition No.7663 of 2019 is extracted hereinbelow:

> *"7. Naturally, the State Government would be bound by the order dated 12.12.2018 passed in Notice of Motion No. 613 of 2018 in Writ Petition No. 2005 of 2012. If the respondents are not adhering to the said order, then the further steps would be taken by the parties in the said Notice of Motion.*
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> *8. Writ Petition is disposed of accordingly. No costs."*

4. From the documents available on record, it is apparent that it is only after the aforesaid two orders passed by this Court, viz. order dated 12th December 2018 and 25th June 2019 that the elections to the Council were held in December 2021 however, the names of the elected managing committee members of the Council were not being published which necessitated filing of writ petition No.4204 of 2022 which was allowed by a coordinate Bench of this Court by means of an order dated 18th April 2022. The Court, while allowing the said writ petition, observed that once the elections are already held, the State Government was under obligation to publish the result of the names of the elected managing committee members of the Council and to publish the same in the Government Gazette. The Court, accordingly,

directed the State Government to publish the names of the elected managing committee members in the official gazette as per the list forwarded to the Government vide letter dated 10th December 2021 by the Returning Officer along with the members as per the provisions contained in the Act of 1966, within a period of two weeks from the date of said order, without fail. The operative portion of the order dated 18th April 2022, whereby writ petition No.4204 of 2024 was allowed, is quoted hereunder:

> *"3. In our view, once the elections are already held by the Managing Committee, under Section 4 of the said Act, the State Government is under an obligation to publish the result of the names of the Elected Managing Committee Members of the Council and to publish in the Maharashtra Government Gazette. We, accordingly, direct respondent No. 1 to publish the names of the Elected Managing Committee Members in the Maharashtra Government Gazette as per the list forwarded to the Government vide communication dated 10.12.2021 by the Returning Officer along with the members as per the provisions of the Maharashtra Nurse Act, 1966 within a period of two (2) weeks from today without fail.*
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> *4. Writ Petition is allowed in the aforesaid terms. Rule made absolute accordingly."*

5. Since even after the order dated 18th April 2022, the list of elected members was not being published in the official gazette, contempt petition bearing No.292 of 2022 in writ petition No.4204 of 2022 was filed, wherein after observing the directions issued by the Court in its order dated 18th April 2022 in writ petition No.4204 of 2022, the Court issued notices to the respondents for

disobedience of the said order, under the Contempt of Courts Act, 1971. It is only on issuance of the contempt notices by this Court that the order dated 18th April 2022 was complied with and the list of the elected managing committee members of the Council was published which led to final disposal of the contempt petition.

6. Thereafter, petitioner No.5-Dr. Ramling Basling Mali and petitioner No.1-Arun Nanasaheb Kadam were elected as President and Vice President respectively of the Council which was notified by means of Notification, dated 8th August 2022, issued by the in-charge Registrar of the Council. It is also on record that immediately after election of petitioner No.5 as President of the Council, an attempt was made by the State Government to remove him which led the petitioner No.5 to file writ petition No.15119 of 2022, wherein an interim order dated 19th December 2022 was passed by the Court. An attempt was also made to remove petitioner No.1 from the post of Vice President which action was challenged by petitioner No.1 by instituting writ petition No.13208 of 2022 before this Court, wherein as well, an order was passed on 23rd December 2022 providing therein that till next date no further process shall be undertaken pursuant to the impugned communication, whereby petitioner No.1 was called

upon to explain as to why he should not be held to have incurred disqualification under Section 7(1)(f) of the Act of 1966.

7. It is in these background facts that the impugned Notification, dated 5th July 2023 has been issued by the State Government dissolving the Council and appointing an Administrator till new Council is constituted in the prescribed manner.

(C) Arguments made on behalf of the parties:

8. We have heard Mr. V. D. Hon, learned Senior Advocate representing the petitioners, Mr. V. D. Sapkal, learned Senior Advocate assisted by Mr. A. B. Girase, Government Pleader for respondent No.1 – State and Mr. S. B. Deshpande, learned Senior Advocate appearing for respondent Nos.2 and 3 and have also perused the records available before us on this petition.

(C1) Submission made on behalf of the petitioners:

9. Mr.Hon, learned Senior Advocate representing the petitioners has vehemently argued that the impugned Notification, dated 5th July 2023 whereby the elected Council has been dissolved, is not only in clear violation of the provisions contained in Section 40 of the Act of 1966 but is also in flagrant violation of

the principles of natural justice inasmuch before issuing the said Notification dissolving the Council, adequate opportunity was not provided to the Council which vitiates the impugned Notification. He has also argued that the attending circumstances of the case clearly establish that initially the State Government was reluctant in constituting the elected Council and it is only on repeated interventions of this Court that with great reluctance the elected Council was constituted. He has also stated that immediately after constitution of the elected Council, attempts were made initially to remove President and Vice President of the Council which ultimately failed because of the intervention made by the Court and therefore, the impugned Notification, dated 5th July 2023 cannot be said to have been issued on the basis of a *bona fide* decision of the State Government.

10. Drawing our attention to Section 40 of the Act of 1966, it has been contended by learned Senior Advocate representing the petitioners that though the said provision vests certain control in the State Government relating to the affairs of the Council and confers the powers upon the Government to dissolve the Council or even remove the President and Vice President, however, such drastic powers cannot be exercised without there being sufficient

material leading to the conclusion that the Council has failed to exercise, or has exceeded or abused, any of the powers conferred upon it or is incapable of functioning. According to Mr.Hon, such drastic step of dissolving the Council is permissible only if the State Government forms an opinion that failure, excess, abuse or incapacity on the part of the Council is of serious character and since in this case no such opinion could be formed on the basis of material available on record, the impugned Notification is unlawful.

11. It has also been argued on behalf of the petitioners that dissolution of the elected body can take place only if the Council fails to remedy the alleged failure, excess, abuse or incapacity within some reasonable time to be prescribed by the State Government and since in this case no such time was ever provided to remedy the alleged failure, excess, abuse or incapacity, the impugned Notification cannot be said to be in conformity with the requirement of Section 40 of the Act of 1966.

12. On the aforesaid counts, it has been prayed on behalf of the petitioners by the learned Senior Advocate that the impugned Notification deserves to be quashed and set aside.

13. Opposing the writ petition, learned Senior Advocate Mr. V. D. Sapkal, Special Counsel representing the State has submitted that the impugned Notification is perfectly in tune with Section 40 of the Act of 1966 which vests power in the State Government to dissolve the Council in the circumstances as enumerated in Section 40 of the Act of 1966, which existed in the instance case and hence, no fault can be found with the impugned Notification. He has also stated that since the Council has failed to act as per the powers conferred on it and the instructions given by the State Government and hence, the action on the part of the State Government in dissolving the Council, is lawful.

14. Drawing our attention to Section 15(3) of the Act of 1966, it has been stated by the learned Senior Advocate representing the State that the Council, without prior sanction of the Government, appointed a review committee and reviewed the performance of Smt. Rachel George, In-charge Registrar of the Council for three years and that the report of the Committee pointed out that said In-charge Registrar had committed certain malpractices and irregularities and accordingly, the Council appointed one Mrs. Swati Bhalerao, Deputy Registrar as Registrar without prior

approval of the Government and accordingly, the Council has completely failed to follow the mandate of Section 15(3) of the Act of 1966. Further submission made by Mr. Sapkal is that the fact that the appointment of Mrs.Swati Bhalearo as Registrar of the Council was made, was taken note of and accordingly, explanation was called from the Council vide letter dated 21st September 2022. In response thereto, certain clarifications were submitted by the Council to the State Government which were not acceptable. He has further stated that Mrs. Rachel George submitted her resignation from the post of Dy. Registrar on 29th August 2022. However, the Council approved her resignation without sanction of the Government and thus removal of Mr. Rachel George from the post of Registrar and appointment of Mrs. Swati Bhalerao by the Council was illegally done, being in violation of the provisions contained in Section 15(4) of the Act of 1966.

15. Pointing to another irregularity allegedly committed by the Council, it has been submitted that the Council had published an advertisement on 30th September 2022 to fill up the regular post of Registrar, however, the Council had not taken the prior approval of the Government which is in violation of Rule 103(5) of the Maharashtra Nursing Council Rules, 1971 for the reason that

the Council did not send any proposal for filling up the post of Registrar by promotion or direct recruitment; neither did it prescribe any procedure. Our attention has also been drawn to an objection raised by a Member of Legislative Assembly during winter session assembly 2022 at Nagpur and accordingly, as per the instructions given by the Hon'ble Minister of the Department concerned the recruitment process was cancelled by the State Government vide its letter, dated 29th December 2022. It has been stated that despite cancellation of the recruitment process, the Council wrote a letter to the State Government on 30th December 2022 in a language that is indecent and disrespectful to the Legislature which amounted to disobeying the orders of the State Government. Referring to various such averments made in the affidavit-in-reply filed on behalf of respondent No.1, learned Senior Advocate has argued that thus, on account of various irregularities committed by the Council, the State Government took the decision to dissolve it in terms of the provisions contained in Section 40 of the Act of 1966 which does not suffer from any illegality and hence, the writ petition deserves to be dismissed.

(C3) Arguments on behalf of respondent Nos.2 and 3:

16. Learned Senior Advocate Mr. Deshpande, appearing for respondent Nos.2 and 3 has not only supported the submissions made by learned Counsel representing respondent No.1 but has also submitted that the procedure as prescribed in Section 40 of the Act of 1966 has been followed in its letter and spirit and that the ground taken by the petitioners relating to violation of principles of natural justice is not available to them. He contended that Section 40 does not require prior opportunity of hearing before decision to dissolve the Council is taken by the State in exercise of its powers vested under the said provision.

17. Relying on the judgment in the case of ***Maneka Gandhi Vs. Union of India***[1], it has been argued by Mr.Deshpande that there cannot be any straight-jacket formula so far as the principles of natural justice are concerned and the same cannot be read in a Statute in absence of any such prescription available in the Statute. In his submission, he has stated that since Section 40 of the Act of 1966 does not prescribe for providing opportunity of hearing, the ground of non-adherence to the principles of natural

[1] ***(1978) 1 SCC 248***

justice is not available to the petitioners. He has justified the impugned Notification and has urged the Court to dismiss the writ petition.

(D) Discussion and analysis:

18. Before delving into the competing arguments made by learned Counsel representing the respective parties, we may note the provisions of Section 40 of the Act of 1966 which runs as under:

> ***"40. Control of State Government-***
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> *(1) It at any time it appears to the State Government that the Council or its President or Vice-President has failed to exercise, or has exceeded or abused, any of the powers conferred upon it or him by or under this Act, or has ceased to function, or has become incapable of functioning, the State Government may, if it considers such failure, excess, abuse or incapacity to be of serious character, notify the particulars thereof to the Council or the President or the Vice-President, as the case may be. If the Council or the President or the Vice-President fails to remedy such failure, excess, abuse or incapacity within such reasonable time as the State Government may fix in this behalf, the State Government may remove the President or the Vice-President or dissolve the Council, as the case may be, and in the case of dissolution of the Council cause all or any of the powers, duties and functions of the Council to be exercised, performed and discharged by such persons and for such period not exceeding two years, may think fit, and shall take steps to constitute, a new Council."*

19. The afore-quoted provision contained in Section 40(1) of the Act of 1966 vests in the State Government control over the affairs of the Council and also empowers the Government to dissolve the

Council in certain circumstances. If we minutely scrutinize the scheme as enunciated in Section 40 of the Act of 1966 what we find is noted below:

(i) The State has power to dissolve the Council under certain circumstances.

(ii) If the State notices that the Council has failed to exercise or has exceeded or has abused powers conferred upon it or has ceased to function or has become incapable of functioning and the Government considers such failure or excess etc. to be of serious character, then such particulars are to be notified to the Council.

(iii) The State Government, on notifying the particulars of the alleged failure/excess and abuse etc. has to require the Council to remedy such failure, excess, abuse or incapacity within some reasonable time to be fixed by the State Government in this behalf.

(iv) if the Council fails to remove such failure, excess, abuse or incapacity within such reasonable time which may be fixed by the State Government, the State Government has been empowered to dissolve the Council.

(v) in case the State Government dissolves the Council it will cause all or any of the powers, duties and functions of the Council to be exercised, performed

> and discharged by such person and for such period not exceeding two years, which is thought fit and simultaneously, the Government shall take steps to constitute a new Council.

20. Thus, it is apparent from a perusal of what is embodied in Section 40 of the Act of 1966 that if the State Government notices any action/actions of the Council where it has failed to exercise or has exceeded or abused its powers, or has ceased to function or has become incapable of functioning, it has to first form an opinion that such failure, excess or abuse or incapacity is of serious character and only then it has to notify the particulars thereof to the Council. The scheme as per Section 40 also provides that the drastic action of dissolution of Council can be taken only if the Council fails to remedy the failure, access, abuse or incapacity to be notified to the Council, within the time prescribed by the State Government for the said purpose and not otherwise.

21. Thus, in our opinion, the actin of dissolution of the Council has to necessarily precede not only the notification of particulars of alleged failure, excess etc. on the part of the Council by the State Government but also the prescription time to be intimated to the Council to remedy such failure or excess etc. In case even after notification of such failures or excess etc., the Government

does not fix any time to remedy the same and the decision to dissolve the Council is taken by the State Government, in our opinion, such a course adopted by the State Government for dissolving the Council would manifestly run contrary to the scheme of Section 40 of the Act of 1966.

22. In light of the aforesaid observations made by us in respect of the scheme embodied in Section 40 of the Act of 1966, we, now proceed to examine as to whether the alleged abuse or excess or incapacity etc. of the Council was notified to it by the State and as to whether after notifying the particulars of failures/excess/abuse/incapacity etc. any time was intimated or communicated to the Council to remedy the same during which the Council would have failed to correct or rectify the failure/excess/abuse/incapacity, as alleged by the State Government. In case we find that any of the steps or procedures prescribed in Section 40 of the Act has not been followed by the State Government while issuing the impugned Notification dissolving the Council, the impugned Notification would be rendered unlawful for want of observance of the provisions contained in Section 40 of the Act of 1966.

23. We may also note at this juncture that dissolution of an elected body is a drastic step and as such all mandatory precautions statutorily provided which should precede the action of dissolution, should necessarily be adhered to by the State Government. We may also note that since dissolution of an elected body results in a very drastic action, even if Section 40 of the Act does not expressly provide for any opportunity of hearing to the Council before decision of dissolution of Council is taken, the principles of natural justice are to be read in the said provision.

24. It is true that there is no straight-jacket formula for observance of principles of natural justice. However, in case any intended action on the part of the authority concerned is likely to visit the elected body with such serious consequences like its dissolution, in our opinion, even if the statutory provision does not specifically contain the provision for providing the opportunity of hearing and submitting explanation to the intended action, the principles of natural justice are to be read to be intrinsic in such a provision permitting such extreme actions.

25. Hon'ble Supreme Court in the case of ***Dr. Rash Lal Yadav***

Vs. State of Bihar & Ors.[2] has dealt with concept of natural justice in detail and has observed that if a statute confers drastic power it goes without saying that such powers must be exercised in a proper and fair manner and further that drastic substantive laws can be suffered only if they are fairly and reasonably applied and that the rules of natural justice have been devised for ensuring fairness and promoting satisfactory decision-making. Paragraph 6 of the report in ***Dr. Rash Lal Yadav (supra)*** is extracted hereinbelow:

> *"6. The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where*

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[2] **(1994) 5 SCC 267**

the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indications to the contrary as in the present case. This Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150 : (1970) 1 SCR 457] after referring to the observations in State of Orissa v. Dr (Miss) Binapani Dei [(1967) 2 SCR 625 : AIR 1967 SC 1269] observed as under : (SCC p. 272, para 20)

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness."

Hon'ble Supreme Court in ***Dr. Rash Lal Yadav (supra)*** has concluded that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, Courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences. Paragraph 9 of the judgment in the case of ***Dr. Rash Lal Yadav (supra)*** is extracted hereinbelow:

"9. *What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences. However, in this case, the High Court has, having regard to the legislative history, concluded that the deliberate omission of the proviso that existed in sub-section (7) of Section 10 of the Ordinance (1980) while re-enacting the said*

sub-section in the Act, unmistakably reveals the legislature's intendment to exclude the rule of giving an opportunity to be heard before the exercise of power of removal. The legislative history leaves nothing to doubt that the legislature did not expect the State Government to seek the incumbent's explanation before exercising the power of removal under the said provision. We are in complete agreement with the High Court's view in this behalf."

26. Thus, what has been held by Hon'ble Supreme Court in ***Dr. Rash Lal Yadav (supra)*** is that unless the Legislature, while enacting a statute deliberately intends to exclude the rule of giving opportunity to be heard, the Court will read such requirement in such enactments which are silent and insist on application of such rule in cases of administrative action having civil consequences. Though so far as the Statute under consideration in the said judgment is concerned, Hon'ble Supreme Court analyzed the facts of the said case and held that legislative history leaves nothing to doubt that the legislature in the said case did not expect the State Government to seek incumbent's explanation before exercising the power of removal, however, so far as the principle laid down in the said judgment is concerned, it is abundantly clear that unless a statute expressly or by necessary implication excludes the application of rule of natural justice, the Courts need to read such requirement in the Statute which are silent and should insist on application of principles of natural justice in a situation

resultant in some severe consequence.

27. In ***Mangilal Vs. State of M.P.[3],*** the Hon'ble Supreme Court has also clearly held that even if a statute is silent and there are no positive words in the Act or the Rules made thereunder providing for observance of principles of natural justice, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected. In this case Section 357 of the Cr.P.C. was under consideration which provided that when a Court imposes sentence or fine or sentence of which fine forms part the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied for in certain proceedings.

The Court considered the question in the said case as to whether it was required to hear the accused before fixing the quantum of compensation.

Section 357(3) empowers the Court while imposing sentence of which fine does not form a part, to order the accused person to pay such amount as may be specified, by way of compensation to the person who has suffered any loss or injury. Sub Section 4 of

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[3] **(2004) 2 SCC 447**

Section 357 confers such powers available to the appellate Court, to the High Court and also the Court of Sessions while exercising its powers of revision. Though Section 357(3) does not specifically provide for providing opportunity of hearing to the accused before passing the order quantifying the compensation, however, Hon'ble Supreme Court held that even in absence of any express provision, opportunity has to be granted by the Court concerned before directing payment of compensation under Section 357(4) of the Cr.P.C. Paragraph 10 of the judgment in the case of ***Mangilal Vs. State of M.P. (supra)*** is extracted hereinbelow:

> ***"10.*** *Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664 : AIR 1981 SC 818] .) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end*

in themselves. The principles of natural justice have many facets. Two of them are : notice of the case to be met, and opportunity to explain."

28. Recognizing the doctrine that principles of natural justice are not to be construed in a straight-jacket formula, Hon'ble Supreme Court in ***Dilip B. Jiwrajka Vs. Union of India & Ors.[4],*** has observed that nature of natural justice is liable to vary with the exigencies of the situation and that it may extend to a fully-fledged hearing in a given situation and in another situation, principles of natural justice may require that bare minimum opportunity should be given to the individual who is liable to be affected by an action, to furnish an explanation to the allegations or the nature of inquiry. Paragraph 64 of the report in the case of ***Dilip B. Jiwrajka (supra),*** runs as under:

> ***"64.*** *At the same time, it needs to be noted that the principles of natural justice are not to be construed in a straitjacket. The nature of natural justice is liable to vary with the exigencies of the situation. In a given situation, it may extend to a fully-fledged evidentiary hearing while, on the other hand, the principles of natural justice may require that a bare minimum opportunity should be given to an individual who is liable to be affected by an action, to furnish an explanation to the allegations or the nature of the enquiry."*

29. Referring to ***Mangilal (supra)*** Hon'ble Supreme Court in ***Aureliano Fernandes Vs. State of Goa and Ors.[5],*** has held

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[4] **(2024) 5 SCC 435**

[5] **(2024) 1 SCC 632**

that even if a statute is silent and there are no positive words in the Act or Rules, principles of natural justice must be observed in certain situations.

30. Thus, the doctrine that even if a statute or statutory rules are silent, principles of natural justice are to be adhered to, has been applied in the context of service law by Hon'ble Supreme Court in ***Aureliano Fernandes (supra).*** The Hon'ble Supreme Court in ***Aureliano Fernandes (supra)*** has also held that the Courts, while interpreting the statutory provisions shall proceed on a premise that no statutory authority would violate the fundamental rights and when it comes to the judicial or *quasi*-judicial authorities, the rule of *audi alteram partem* applies with full force. Paragraph 44 of the judgment in the case of ***Aureliano Fernandes (supra)*** is quoted hereunder:

> ***"44.*** *In the context of service law, it is, therefore mandatory to afford a government servant or an employee, a reasonable opportunity of being heard before an order is passed. In Mangilal v. State of M.P. [Mangilal v. State of M.P., (2004) 2 SCC 447 : 2004 SCC (Cri) 1085] , this Court declared that even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, principles of natural justice must be observed. This is what the Court has held : (SCC p. 454, para 10)"*
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> > *"10. … Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment.*

(See Swadeshi Cotton Mills v. Union of India [Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664]) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves."

31. From the aforesaid discussion, what is apparent is that in a given situation, the Court can interpret a statutory provision to intrinsically contain the requirement of observance of principles of natural justice even if such a statute or statutory rule does not contain any positive word prescribing the same or is silent about it.

32. When we examine Section 40 of the Act of 1966, what we find is that the said provision in itself mandates that the principles of natural justice need to be observed before taking as drastic a decision as dissolution of the elected Council. As already observed above, there cannot be any straight-jacket formula where the principles of natural justice can be said to fit-in every circumstance. The manner in which the principles of natural justice are to be observed by giving opportunity of hearing against the intended action to the party which is likely to suffer adverse civil consequences, depends on the nature of action proposed and to ensure fairness in such action.

33. We have already discussed the scheme as contained in Section 40 of the Act of 1966 according to which the first step to exercise the powers under Section 40 is that the State has to notify the particulars of failure, excess, abuse or incapacity of the council. The second step to be followed, in our opinion while taking recourse to Section 40 of the Act of 1966 by the State Government is to communicate or intimate the Council a time frame within which the Council needs to remedy the alleged failure or excess or abuse or incapacity and it is only in a case where within the time frame prescribed by the State Government the Council fails to remedy the reported failure or excess or abuse or incapacity, that may lead the State Government to take the decision for its dissolution.

34. Once the provision contained in Section 40 provides that the instances of failure or excess or incapacity at the end of the Council are to be notified to it and Council has to be given opportunity to remedy such alleged failure, excess, abuse or incapacity, in our opinion, if the State Government, before taking the decision to dissolve the Council notifies the particulars of failure and excess or abuse or incapacity and provides time frame for the Council to remedy the same, the requirement of

observance of principles of natural justice intrinsically exist in Section 40 of the Act of 1966. Our conclusion, on the basis of the aforesaid discussion, thus, is that though Section 40 of the Act of 1966 does not contain any positive words, requiring the State to give opportunity of hearing to the Council before a decision of dissolution is taken, however, the scheme as contained in Section 40(1) is such that it contains the requirement of observance of principles of natural justice, firstly; by notifying the particulars of alleged failure, excess, abuse or incapacity on the part of the Council and, secondly; by providing a time frame giving opportunity to the Council to remedy such alleged failure, excess, abuse or incapacity and therefore, giving opportunity to the Council to furnish explanation as to why it may note be dissolved.

35. Having discussed as above, what we now need to examine is as to whether the procedure as provided for in Section 40(1) of the Act of 1966 before issuing the impugned Notification dissolving the Council in the instant case has been followed or not.

36. Though learned Senior Advocate representing the State of Maharashtra has taken the Court to various communications and correspondences made by the State Government to the Council to

lay emphasis that the procedure as prescribed under Section 40 of the Act of 1966 has been followed, however, we find that none of such correspondences or communications ever communicated or gave any time in terms of Section 40 of the Act of 1966 requiring the Council to remedy the alleged irregularity/ excess/ failure/ abuse/ incapacity etc.

37. In this regard, reference was made by the learned Counsel representing respondent No.1 to the communication, dated 7th November 2022 addressed to the President of the Council whereby it was informed to the Council that the charge of the post of In-charge Registrar has been removed from Smt. Rachel George and has been given to Mrs. Swati Bhalerao without approval of the State Government as required under Sections 15(1), 15(3) and 15(4) of the Act of 1966, which was illegal. Paragraph 3 of the said communication, dated 7th November 2022 though states that the action should be taken in accordance with the order of the Government and matter may be reported to the Government, however, said communication does not prescribe any time limit for remedy such alleged illegality which cannot be said to be in conformity with the provisions of Section 40(1) of the Act of 1966.

38. Our attention has also been drawn to another communication, dated 4th November 2022 made by the State Government to the President of the Council, whereby it was informed to the Council that Mrs. Swati Bhalerao was appointed as In-charge Registrar (Additional Charge) without prior approval of the Government as per the requirement of Section 15(3) of the Act of 1966 and accordingly, it be noted that the decision/operation of Additional Charge of Mrs. Swati Bhalerao on the post of Registrar was not valid. Said communication made by the State Government though notified the alleged irregularity/lapse or failure on the part of the Council, however, it also did not prescribe any time period within which the reported irregularity was to be remedied by the Council. Accordingly, we are of the opinion that even this communication, dated 4th November 2022 does not fulfill the requirement of granting time to the Council to rectify the irregularity or remedy the alleged excess, failure, abuse or incapacity at the end of the Council.

39. We have also been taken through the communication of the State Government made to the Registrar of the Council, dated 29th December 2022, wherein the recruitment process initiated for

appointment to the post of Registrar of the Council was cancelled. The Government, though required a report in this regard after taking action however, the communication dated 29th December 2022 also did not prescribe the time period within which the said reported irregularity was to be remedied. This communication, thus, is also not as per the requirement of Section 40(1) of the Act of 1966. Our attention has also been drawn to other such communications, however, in all such communications, though alleged lapse or irregularity or abuse or excess has been notified, however, said communications did not fix any time frame to remedy such irregularities, whereas, Section 40(1) of the Act of 1966, in no uncertain terms, mandates that time frame has to be communicated to the Council by the State Government which has to be reasonable and needs to be fixed by the State Government, for remedying the reported lapse.

40. We are also of the opinion that since the impugned action of dissolving the elected Council is such a radical action whereby an elected body has been dissolved and in its place an Arbitrator has been appointed, therefore, it was incumbent upon the State Government to give an opportunity to the Council, before taking the decision, of tendering its dissolution of explanation as to why,

because of the alleged lapses or irregularities, the Council may not be dissolved.

41. Dissolution of an elected body, like in the present case, is drastic in its true nature. Such an action clearly amounts to annulling a body which is elected by the electorates as per the prescriptions available in an Act of State Legislature i.e. Act of 1966. Dissolution of such an elected body results in removal of the elected persons and accordingly, the action of dissolution is extreme, serious and radical which results in far reaching consequences. For this reason alone, we are of the opinion that before taking decision to dissolve the Council, in accordance with the requirement of observance of the principles of natural justice an opportunity to explain as to why the Council may not be dissolved because of the already notified failure/excess/incapacity on the part of the Council which stood unremedied, ought to have been given to the Council and having not done so, in our opinion, the State Government has clearly erred in law which renders the impugned Notification, dated 5th July 2023 dissolving the Council as illegal and unsustainable.

42. Our attention was also drawn to the National Nursing and

Midwifery Commission Act, 2023 enacted by the Parliament as Act No.26 of 2023 which has been published in the official gazette of Government of India on 12th August 2023. It has been argued on the basis of the Act No.26 of 2023 by the learned Senior Advocate representing the State that Section 23 of the said Act mandates that every State Government, within one year from the commencement of the Act, shall constitute a State Nursing and Midwifery Commission, where no such State Commission exists in that State by a State Law, for exercising such powers and discharging such duties as may be laid down under the Act No.26 of 2023. Mr. Sapkal, learned Senior Advocate representing the State has, thus, argued that since Act No.26 of 2023 has been published in the Official Gazette on 12th August 2023, as such, now the State Government will have to constitute a State Nursing and Midwifery Commission under Section 23 of the Act No.26 of 2023 and therefore, the Council as elected under the Act of 1966 will no longer be required to be constituted.

43. We may note that in terms of the provisions contained in sub Section 2 of Section 1 of Act of 26 of 2023, the said Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. On a specific query

made as to whether Notification under Section 1(2) of the Act No.26 of 2023 has been issued, Mr.Girase, learned Government Pleader on instructions has stated that till date neither the National Nursing Midwifery Commission has been constituted under Section 23 of the Act 26 of 2023 nor Notification under Section 1(2) has been published. Mr.Girase has produced before the Court a communication, dated 28th August 2023 from the Government of India, Ministry of Health and Family Welfare to the Principal Secretary (Health), Secretary, Medical Education of all the States and Union Territories wherein it has been stated that the Ministry in the Central Government is in process to frame rules and has invited the State Governments and the Government of Union Territories to provide their comments to improve framing of rules. Thus, the submissions based on Act No.26 of 2023 by the learned State Counsel does not bear any credence for the same reason that the Notification as per the requirement of Section 1(2) has yet not been published and hence, the said Act has not even come into force till date.

(E) Conclusion:

44. For the reasons given and discussion made above, we, without any ambiguity, conclude that the impugned Notification

dated 5th July 2023 issued by the State Government, whereby the Council has been dissolved, is completely illegal and therefore, deserves to be quashed.

45. Resultantly, the writ petition is allowed.

46. The impugned Notification, dated 5th July 2023 issued by the State Government dissolving the Council is hereby quashed. The elected Council shall, accordingly, be restored forthwith.

47. It will, however, be open to the State Government to proceed in accordance with law keeping in mind the observations made in the preceding paragraphs of this judgment.

48. There will be, however, no order as to costs.

49. Interim application(s), if any, also stand disposed of.

(KISHORE C. SANT, J.) **(CHIEF JUSTICE)**