**IN THE HIGH COURT FOR THE STATE OF TELANGANA**

**AT: HYDERABAD**

**CORAM:**
*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

**+ WRIT PETITION NOs.35702 AND 37659 OF 2022**

**% Delivered on: 17-04-2023**

**WRIT PETITION No.35702 OF 2022**

**Between**:

# Manav Sethi ….. Petitioner

Vs.

$ The Adjudicating Authority-Deputy Director,
Office of the Joint Director, Enforcement Directorate
Hyderabad Zonal Office, Hyderabad
and another .. Respondents

**WRIT PETITION No.37659 OF 2022**

**Between**:

# Telearc Technologies Private Limited
and other .. Petitioners

Vs.

$ Union of India and others .. Respondents

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| ! For Petitioners in W.P.No.35702 of 2022 | : Mr. Deepak Bhattacahrjee Ld.Senior Counsel representing Mr.Dishit Bhattacharjee Ld.Counsel |
| ! For Petitioners in W.P.No.37659 of 2022 | : Mr. Vedula Srinivas, Ld.Senior Counsel representing Mr.V.Aneesh, Ld.counsel |
| ^ For Respondents in both writ petitions | : Mr. Anil Prasad Tiwari, Lr. Standing counsel for Enforcement Directorate |

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> Head Note

? Cases Referred :

1. WP© Nos.6239 and 6240 of 2020
2. (2007) 4 SCC 221
3. Civil Appeal No.8249 of 2013
4. 2011(14) SCC 337
5. 2021 SCC OnLine SC 884.
6. [1999] UKHL 52.
7. (1984) 4 SCC 103.
8. (1998) 4 SCC 470.
9. (2005) 9 SCC 579.
10. (2004) 11 SCC 625.
11. (2020) 10 SCC 120.

**THE HON'BLE SRI JUSTICE K.LAKSHMAN**

**WRIT PETITION NOs.35702 AND 37659 OF 2022**

**COMMON ORDER:**

The present writ petitions arise out of a common set of facts and involve similar issues. Therefore, they are being decided *vide* the following common order.

2. The present writ petitions are filed challenging the orders dated 05.09.2022 on File No. T-4/04/HYZO/2019 passed by the Adjudicating Authority (Respondent No. 3 in W.P. No. 37659 of 2022) as arbitrary, illegal and without jurisdiction.

3. Heard Mr. Deepak Bhattacharjee, learned senior counsel representing Mr. Dishit Bhattacharjee, learned counsel for the Petitioner in W.P. No. 35702 of 2022 and Mr. Vedula Srinivas, learned senior counsel representing Mr. V. Aneesh, learned counsel for the Petitioners in W.P. No. 37659 of 2022. Mr. Anil Prasad Tiwari learned standing counsel for the Directorate of Enforcement (hereinafter referred to as 'ED') for the Respondents in both the writ petitions.

4. For the sake of convenience, the parties in W.P. No. 37659 of 2022 will be referred to as the Petitioners and Respondents.

**Facts of the case**

5. M/s Telearc Technologies Pvt. Ltd. (formerly known as Teleonto Tecnologies Pvt. Ltd.) is the Petitioner No. 1 in W.P. No. 37659 of 2022 and is represented by its Managing Director who is Petitioner No. 2 in the said writ petition.

6. According to the Respondents, on receipt of credible information that M/s TeleontoTecnologies Pvt. Ltd. was involved in fraud and misappropriation of funds, an investigation was initiated under the Foreign Exchange Management Act, 1999 (hereinafter referred to as 'the Act, 1999') on file bearing F.No. T-3/10/HZO/2014.

7. After the completion of investigation, a complaint dated 20.06.2019 was filed by the Deputy Director of Enforcement (Respondent No. 3 in W.P. No. 37659 of 2022) under Section 16(3) of the Act, 1999. It is to be noted that one Mrs. Sowmya Nuthalapati was the Deputy Director of Enforcement who filed the complaint dated 20.06.2019.

8. In the said complaint dated 20.06.2019, it was alleged that the Petitioners received foreign direct investment to the tune of

Rs. 1,32,38,364/-between 2009 to 2014 from three foreign companies and one Non-Resident Indian as consideration for issuance of shares worth Rs.85,45,184/-in exchange for such investment in M/s TeleontoTecnologies Pvt. Ltd.The complaint alleges the following contraventions by the Petitioners:

i. Petitioner No. 1 reported with delay the receipt of foreign direct investment to the Reserve Bank of India. Therefore, contravened Section 6(3)(b) of the Act, 1999 r/w Para 9(1)(A) of Schedule I to Regulation 5(1) of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (hereinafter referred to as 'Regulations, 2000').

ii. Petitioner No. 1 failed to report to the Reserve Bank of India, the issuance of shares worth Rs. 85,45,184/- to foreign companies. Therefore, it contravened Section 6(3)(b) of the Act, 1999 r/w Para 9(1)(B) of Schedule I to Regulation 5(1) of the Regulations, 2000.

iii. Petitioner No. 1 failed to file a report titled "Annual Return on Foreign Liabilities and Assets" before the Reserved Bank of India. Therefore, it contravened Section 6(3)(b) of the Act, 1999

r/w Para 9(2) of Schedule I to Regulation 5(1) of the Regulations, 2000.

iv. As Petitioner No. 2 was the Managing Director of Petitioner No. 1 and was responsible for the contraventions by Petitioner No. 1, he is liable under Section 42(1) of the Act, 1999.

v. The complaint stated that the Petitioners are liable to be penalized under Section 13(1) of the Act, 1999.

9. At this stage, it is relevant to note the contraventions as alleged to have been committed by the Petitioner in W.P. No. 35702 of 2022. The complaint dated 20.06.2019 states that one of the three foreign companies i.e., M/s Webford Baseline Ltd. based out of Mauritius invested an amount of Rs. 8,46,90,000/- in exchange for 165976 Compulsorily Convertible Preference Shares. Relying on a letter dated 22.12.2018, it is alleged that the Petitioner in W.P. No. 35702 of 2022 acquired the shares worth Rs.8,46,90,000/- from M/s Webford Baseline Ltd. at a price of Rs. 1/- on 12.10.2010 and on the same day he was appointed as a director in M/s TeleontoTecnologies Pvt. Ltd.

10. It is further alleged that the said transfer of shares in favour of the Petitioner in W.P. No. 35702 of 2022 was done in lieu of a loan

agreement/transfer of debt arrangement to a tune of Rs. 2,70,00,000/- Subsequently, the said shares held by the Petitioner in W.P. No. 35702 of 2022 were transferred to Petitioner No. 2 in W.P. No. 37659 of 2022.

11. Therefore, it is alleged that the Petitioner in W.P. No. 35702 of 2022 did not adhere to the pricing guidelines and has contravened Section 6(3)(b) of the Act, 1999 r/w Regulation 10(B) and Para 10 of Schedule I of the Regulations, 2000 to an extent of Rs. 2,70,00,000/-

12. Based on the said complaint, show cause notices dated 25.07.2019 were issued to the Petitioners. The Petitioners replied to the show cause notices on 09.08.2019 and 21.12.2020. Subsequently, personal hearing notices dated 30.12.2020 were issued to the Petitioners and oral hearings were conducted on 11.01.2021 and 13.01.2021.

13. Show cause notices dated 25.07.2019, 05.08.2022 and 30.08.2022 were issued to the Petitioner in W.P. No. 35702 of 2022. He replied to the said show cause notices on 26.07.2022, 11.08.2022 and 04.09.2022. Subsequently, a personal hearing notice dated 04.07.2022 was issued to him and an oral hearing was conducted on 05.09.2022.

14. After the completion of the oral hearing, the Adjudicating Authority headed by the Deputy Director, ED passed an order dated 05.09.2022 levying a total penalty of Rs. 2,00,00,000/- on Petitioner No. 1 and a penalty of Rs. 2,00,00,000 on Petitioner No. 2 in W.P. No. 37659 of 2022. A penalty of Rs. 8,00,00,000/- was imposed on the Petitioner in W.P. No. 35702 of 2022. It is relevant to note that the said Adjudicating Authority was headed by Mr. Rahul Singhania. Challenging the order dated 05.09.2022, the Petitioners have filed the present writ petitions.

**15. <u>Contentions of the Petitioner in W.P. No. 35702 of 2022</u>**

i. The Petitioner never entered into the alleged transaction acquiring shares worth Rs. 8,46,90,000/- from M/s Webford Baseline Ltd. The letter dated 22.12.2018 based on which it is alleged that the Petitioner had purchased shares worth Rs. 8,46,90,000/- for Rs. 1/- is forged and was never addressed by the Petitioner.

ii. As the letter dated 22.12.2018 is forged, the same cannot be relied upon by the Deputy Director of Enforcement to lodge a complaint under Section 16(3) of the Act, 1999.

iii. The show cause notice dated 24.06.2019 was never received by the Petitioner as the same was addressed to Plot No. 15A, 5th floor, Sai Pruthvi Enclave, Manteera Residency, Kondapur, Hyderabad – 500084. However, the Petitioner is a resident of B74, The Summit, DLF Phase V, Gurgaon – 122003. Therefore, the Petitioner was not aware of the proceedings before the Adjudicating Authority until 15.07.2022.

iv. *Vide* replies 26.07.2022, 11.08.2022 and 04.09.2022to the show cause notices dated 05.08.2022 and 30.08.2022, the Petitioner informed the Adjudicating Authority about the fraudulent documents relied upon in the complaint dated 20.06.2019.

v. The Petitioner requested the Adjudicating Authority to conduct enquiry into the forged and fabricated documents relied upon in the complaint dated 20.06.2019. However, the Adjudicating Authority failed to conduct any enquiry in relation to the said fraudulent documents and passed the impugned order dated 05.09.2022 without providing and reasons or considering the contentions of forgery. Reliance was placed on **JP Morgan India Private Ltd. v**. **Special**

**Director, Directorate of Enforcement**[1] to contend that Adjudicating Authority performs a quasi-judicial function and shall record reasons.

vi. The impugned order is non-est and nullity as it is vitiated by fraud. Reliance was placed on **A.V. Papayya Sastry** Vs. **Govt.of A.P.**[2]**.**

vii. The Petitioner lodged a criminal complaint dated 06.09.2022 against the alleged forgery of documents and signatures.

viii. The show cause notice dated 05.08.2022 is a fresh show cause notice and the same is contrary to Section 16(3) of the Act, 1999 as the same is not preceded by a complaint.

ix. The impugned order violates principles of natural justice as the complaint dated 20.06.2019 and the impugned order dated 05.09.2022 were passed by the same rank officer i.e., the Deputy Director.

**16. Contentions of the Petitioners in W.P. No. 37659 of 2022**

i. The complaint dated 20.06.2019 was filed belatedly and in relation to the contraventions committed between 2009 to 2015. Therefore, the said complaint and the subsequent

[1][WP© Nos.6239 and 6240 of 2020 ]
[2] (2007) 4 SCC 221

impugned order dated 05.09.2022 suffer from delay and laches.

ii. The Act, 1999 does not prescribe a period for limitation within which a complaint is supposed to be filed. However, where no period of limitation is prescribed, the complaint should have been filed within a reasonable period of time. Reliance was placed on **SEBI v. Shri Sunil Krishna Khaitan**[3] to contend that delay of 4-10 years in filing the complaint and passing the impugned order is illegal.

iii. The impugned order dated 05.09.2022 and the complaint dated 20.06.2019 were passed by the same rank officer i.e., the Deputy Director. Therefore, principles of natural justice are violated as no one can be a judge in his case.

iv. The proceedings before the Adjudicating Authority involved an amount of more than Rs.10,00,00,000/- Therefore, the order should have been passed by the Additional Director of Enforcement instead of a Deputy Director.

v. Relying on Section 13 of the Act, 1999, it was contended that the penalty is unjustified and thrice the sum involved in contravention can only be levied when the amount is

[3] (Civil Appeal No.8249 of 2013)

quantifiable. In the present case, as the penalty was imposed on delay in reporting the receipt of foreign direct investment, the amount in contravention cannot be quantified. Therefore, only an amount of Rs. 2,00,000/- could have been levied as penalty.

**17. <u>Contentions of the Respondents</u>:-**

i. The present writ petitions are not maintainable as the Petitioners have an effective alternative remedy under Section 17(2) of the Act, 1999. Reliance was placed on **Nivedita Sharma v. Cellular operators of India**[4]**.**

ii. Principles of natural justice were followed and the Petitioners were issued show cause notices and they have submitted their replies and participated in the oral hearing.

iii. The notification dated 27.09.2018 issued by the Government of India duly authorizes the Adjudicating Authority to conduct enquiry under Section 16(3) of the Act, 1999. Therefore, it cannot be contended that the Deputy Director could not have passed the impugned order.

[4] 2011(14) SCC 337

iv. The Petitioner in W.P. No. 35702 of 2022 did not furnish any proof to establish that the letter dated 22.12.2018 and other documents were forged and fabricated.

v. The Petitioner in W.P. No. 37659 of 2022 cannot contend that the case involved in more than Rs. 10,00,00,000/- as the case concerning the Petitioners involved only Rs. 4,87,83,548/- Therefore, the Deputy Director was empowered to pass the impugned order dated 05.09.2022.

**Findings of the Court:-**

18. *In principio*, this Court will have to decide the maintainability of the present writ petitions. The Supreme Court has time and again reiterated that a writ petition is not maintainable when an efficacious alternative remedy is available. It is only in certain limited circumstances that a writ petition can be entertained, despite there being an alternative remedy.

19. In **Assistant Commissioner of State Tax v. Commercial Steel Limited**[5], a full bench of the Supreme Court held that a writ petition, in presence of an alternative remedy, is maintainable only in exceptional cases. The relevant paragraph is extracted below:

[5]2021 SCC OnLine SC 884.

**The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:**
**(i) a breach of fundamental rights;**
**(ii) a violation of the principles of natural justice;**
**(iii) an excess of jurisdiction; or**
**(iv) a challenge to the vires of the statute or delegated legislation.**

20. Therefore, only in cases where there is a breach of fundamental rights or violation of principles of natural justice or excess of jurisdiction or challenge to the vires of a law, can a writ petition be entertained.

21. In the present case, the Petitioners have raised only two issues which need consideration by this Court to decide the maintainability of the writ petition. It was contended that the impugned order is violative of principles of natural justice as the same authority which filed the complaint also passed the impugned order. Therefore, the principle of no one can be a judge in his own case is violated.

22. Further, the Petitioner in W.P. No. 37659 of 2022 contended that case before the Adjudicating Authority involved a sum of more than Rs. 10,00,00,000/- Therefore, the impugned order was passed without jurisdiction by the Deputy Director of Enforcement and the

same was supposed to be passed by the Additional Director of Enforcement.

23. From the above discussion, the following issues fall for consideration before this Court:

1. Whether the impugned order was passed in violation of principles of natural justice on account of the complainant and Adjudicating Authority being officers of the same rank/designation?
2. Whether the Deputy Director of Enforcement had jurisdiction to pass the impugned order in light of the contention that the case before the Adjudicating Authority involved an amount more than Rs. 10,00,00,000/-?

**Issue No.1:-**

24. From the contentions of the Petitioners, it appears that they challenge the impugned order alleging violation of the maxim '*nemo judex in causa sua'*. The said maxim codifies the fundamental principle of fairness and justice i.e., no one can be a judge in his own case.

25. The maxim *'nemo judex in causa sua'* states that a person who has interest either personal or pecuniary in an outcome of a particular *lis*, he/she shall not act as an adjudicator in the said *lis*. In other words, a person authorized to decide a dispute between the

parties shall refuse decide such dispute, if he/she is connected to any of the party to such dispute either professionally, personally or monetarily. The connection should give rise to strong probable apprehension of bias in favour of one party.

26. Explaining the said maxim, the House of Lords in **In Re Pinochet**[6] decided by the House of Lords held as follows:

> The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.

27. The Supreme Court in **J. Mohapatra & Co. v. State of Orissa**[7]held that justice can never be done in cases where a person who has interest decides such cases.

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[6][1999] UKHL 52.

28. Further, it was held that the maxim '*nemo judex in causa sua*' is equally applicable to quasi-judicial proceedings. The Court also noted that the principle of '*nemo judex in causa sua*' is not absolute and exceptions can be made when such person is a *sine qua non* for such adjudication and necessity warrants adjudication of the dispute by such person. The relevant paragraphs are extracted below:

> 9. It is, however, unnecessary to go further into this controversy for the real question in this appeal is of far greater importance. That is the question of bias on the part of some of the members of the Assessment Sub-Committee. This question has been answered against the appellants and forms the subject-matter of the third and fourth grounds on which the High Court rested its decision. *Nemo judex in causa sua*, that is, no man shall be a judge in his own cause, is a principle firmly established in law. Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in courts of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing in camera. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. This principle applies not only to judicial proceedings but also to quasi-judicial and administrative proceedings. The position in law has been succinctly stated in *Halsbury's Laws of England*, Fourth Edn., Vol. 1, para 68, as follows:
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> "*Disqualification for financial interest.*—There is a presumption that any direct financial interest, however small, in the matter in dispute disqualifies a person from adjudicating. Membership of a company, association or other organisation which is financially

[7](1984) 4 SCC 103.

interested may operate as a bar to adjudicating, as may a bare liability to costs where the decision itself will involve no pecuniary loss."

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12. There is, however, an exception to the above rule that no man shall be a judge in his own cause, namely, the doctrine of necessity. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or administration would break down. Thus, in *The Judges* v. *Attorney-General for Saskatchewan* [(1937) 53 TLR 464 : 1937 WN 109] the Judges of the Court of Appeal were held competent to decide the question whether Judges of the Court of Appeal, of the Court of King's Bench and of the District Courts of the Province of Saskatchewan were subject to taxation under the Income Tax Act, 1932, of Saskatchewan on the ground that they were bound to act ex necessitate. The doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters. The High Court, however, wrongly applied this doctrine to the author-members of the Assessment Sub-Committee. It is true, the members of this Sub-Committee were appointed by a Government Resolution and some of them were appointed by virtue of the official position they were holding, such as, the Secretary, Education Department of the Government of Orissa, and the Director, Higher Education, etc. There was, however, nothing to prevent those whose books were submitted for selection from pointing out this fact to the State Government so that it could amend its Resolution by appointing a substitute or substitutes, as the case may be. There was equally nothing to prevent such non-official author-

> members from resigning from the committee on the ground of their interest in the matter.

Therefore, where a judge/authority has apparent bias in the form of financial, proprietary or personal interest in a particular dispute, he/she will be disqualified to adjudicate such dispute in light of the maxim '*nemo judex in causa sua*'.

29. The question now would be whether the maxim '*nemo judex in causa sua*' is violated in the present case merely because the complainant and the Adjudicating Authority happen to be the same ranked officials/authority.

30. As stated above, the complaint dated 20.06.2019 was filed by Mrs. Sowmya Nuthalapati, Deputy Director of Enforcement, whereas the impugned order dated 05.09.2022 was passed by Mr. Rahul Singhania, Deputy Director of Enforcement. According to this Court, merely because the Adjudicating Authority and the authority lodging complaint have the same rank, the impugned order is not vitiated by violation of principles of natural justice.

31. In **Hyderabad Vanaspathi Ltd. v. A.P. SEB**[8], the Supreme Court dealt with a scenario where action was taken and compensation was sought to be recovered for pilferage of electricity by the Board

[8](1998) 4 SCC 470.

under Clause 39 of the standard form contract therein. The Appellants therein contended violation of the principle '*nemo judex in causa sua*' on the ground that the authority which launches prosecution under the Electricity Act, 1910cannot decide and levy compensation for loss. The Court rejected the said contention and held that officer appointed under a statute cannot be said to have a personal dispute with a party before it. The relevant paragraph is extracted below:

> 43. The principle "*nemo judex in causa sua*" will not apply in this case as the officers have no personal lis with the consumers. As pointed out by learned Senior Counsel for the Board, they are similar to income tax or sales tax officials. There is nothing wrong in their adjudicating the matter especially when the consumers may be represented by an advocate and the formula for making provisional assessment is fixed in the clause itself. An argument has been advanced that the Board has recently deleted the provision enabling the consumer to be represented by a power-of-attorney agent. It is contended that the consumer is thereby deprived of the assistance of an expert which may be required in technical matters. We do not agree. When the consumer is represented by a lawyer, he can certainly get such assistance as may be needed from a technical expert. It is stated by the Board's learned counsel that the provision was deleted as there was frequent misuse of the same. Whatever may be the reason for deleting the provision, the existing part of the clause enables the consumer to be represented by an advocate. That is sufficient safeguard for the consumer.

32. In **Union of India v. Vipan Kumar Jain**[9], dealt with a case where the assessment by the Assessing Officer was challenged on the ground of bias alleging that the same officer conducted search under the Income Tax Act, 1961. The Court rejected the allegation of bias held that bias cannot be presumed where the statute granted power to the authority. Further, where bias is alleged and the provision is not challenged, the Court cannot read down the powers of the authority and limit the powers granted under the statute. A party apprehending bias has ample opportunity to establish the same where an appellate mechanism is provided. The relevant paragraphs are extracted below:

> 5. According to the appellants the decision of the High Court should not be sustained on the ground that the High Court had failed to take into account, the entire scheme of the Act and several provisions which permitted the assessing officer to discharge the functions of a fact-finding authority. Particular reference has been made to Sections 120, 124, 131(1), 132(8), 132(9), 133-A, 133-B and Section 142. It is pointed out that the High Court having expressly found that there were no mala fides attributed should not have interfered with what was a question of jurisdiction and discharge of statutory duties. The decision of the High Court, according to the appellants apart from their running contrary to the scheme of the Act, would amount to a limitation on the powers conferred statutorily on the assessing officer. The appellants contend that there is no "structural bias" in the sections of the Act and that in any event the appellants have not impugned any provision of

[9](2005) 9 SCC 579.

the Act as being constitutionally invalid on the ground that it opposed the basic principles of natural justice.

6. In our view, this appeal must be allowed. The several sections which have been cited by the appellants would show that the assessing officer has, either directly or by virtue of his appointment or authorisation by a superior authority under the Act, been given the power of gathering information for the purposes of assessment. The mode of gathering such information may vary from the mere issuance of a notice under Section 142 to the more intrusive method of entry and search envisaged under Sections 133-A and 133-B and seizure under Section 132. **The appellants are also correct in their submission that in the absence of any challenge to any of these provisions, it was not open to the High Court to have disabled the assessing officer from discharging his statutory functions. What the High Court has done is to read limitations into the Act and to qualify the jurisdiction of the assessing officer and the powers of the authorities empowered to appoint the assessing officer as an authorised officer under Section 132 without any foundation for such conclusion being laid in any manner whatsoever by the writ petitioners.**

**7. Apart from the absence of any challenge to the provisions of the Act relating to the jurisdiction of the assessing officer to carry out the search under Section 132, subject to his being appointed as an authorised officer thereunder, we are of the view that there is no question of imputing or presuming a bias where action is followed under the section. The assessing officer is required to assess the income on the basis of facts as found. Such finding may be through any of the provisions referred to above. The only limitation on his drawing a conclusion from the facts as found is the requirement of allowing the assessee an opportunity of explaining the material. Even though it could be said that in a sense since the assessing officer was acting on behalf of the Revenue, in discharging the**

**functions as an assessing officer, he was a party to the dispute, nevertheless there is no presumption of bias in such a situation.** As said in *H.C. Narayanappa* v. *State of Mysore* [AIR 1960 SC 1073 : (1960) 3 SCR 742] , SCR at p. 753:

"It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government."

**8. There is nothing inherently unconstitutional in permitting the assessing officer to gather the information and to assess the value of the information himself. The issue as to the constitutional validity of a provision which permitted an examining board not only to hold an inquiry but also to take action against doctors was raised before the Supreme Court of the United States in *Harold Withrow* v. *Duane Larkin* [43 L Ed 2d 712 : 421 US 35 (1975)] . In negating the challenge the Court said: (US p. 47)**

**"The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individual poses such a risk of**

**actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented."**

**9. It is true that there may be cases where the outcome of the assessment may be influenced by the fact that the raiding assessing officer had himself in the course of the raid been witness to any incriminating material against the assessee. The assessing officer's decision on the basis of such material is not the final word in the matter. The assessment order is appealable under the provisions of the statute itself and ultimately by way of judicial review.**

10. Finally, the courts cannot read in limitations to the jurisdiction conferred by statutes, in the absence of a challenge to the provision itself when the language of the Act clearly allows for an ostensible violation of the principles of natural justice including the principle that a person cannot be a judge in his own cause. In *Union of India* v. *Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] in recognition of this principle this Court held: (SCC p. 479, para 101)

"*101*. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the *nemo judex in causa sua* rule as also to the audi alteram partem rule. The *nemo judex in causa sua* rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in *J. Mohapatra & Co.* v. *State of Orissa* [(1984) 4 SCC 103] ."

33. The Supreme Court in **Delhi Financial Corpn. v. Rajiv Anand**[10] held that bias cannot be attributed to an authority/officer merely because he is authorized to adjudicate a dispute under law. Unless personal bias is attributed or shown, authority of an officer

[10](2004) 11 SCC 625.

appointed under a statute cannot be questioned on the ground that he has interest in the outcome of the case. The relevant paragraphs are extracted below:

> 9. Faced with this authority, it was submitted that the observations made by the Constitution Bench are per incuriam inasmuch as this authority has not taken note of the judgment in *Gullapalli Nageswara Rao case*[1959 Supp (1) SCR 319 : AIR 1959 SC 308] . We are unable to accept this submission. It is to be seen that there is a big difference in the facts of the two cases. The doctrine that "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine "no man can be a judge in his own cause". Of course, in individual cases bias may be shown against a particular officer but in the absence of any proof of personal bias or connection merely because officers of a particular corporation are named as the authority does not mean that those officers would be biased. As has been held by the Constitution Bench, a Managing Director is a high-ranking officer. He is not personally interested in the transaction. There is no question of any bias or conflict between his interest and his duty. In *Gullapalli Nageswara Rao case*[1959 Supp (1) SCR 319 : AIR 1959 SC 308] the Secretary who had framed the Scheme then proceeded to hear the objections and advise the Chief Minister. It is because of the personal involvement of the Secretary that the majority took the view. Even then two Judges held that it did not follow that he was an improper person to hear the objections.
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> 13. In the case of *Accountant and Secretarial Services (P) Ltd.* v. *Union of India* [(1988) 4 SCC 324] the appointment of an

> officer of the respondent Bank as an Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was challenged on the ground that it was violative of Article 14 of the Constitution. This Court held that in the very nature of things, only an officer or an appointee of the Government, statutory authority or Corporation can be thought of for implementing the provisions of the Act. This Court held that personal bias cannot be attributed to such officers either in favour of the bank or against any occupant who is being proceeded against, merely because he happens to be an officer.
>
> 14. Thus, the authorities disclose that mere appointment of an officer of the corporation does not by itself bring into play the doctrine that "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting. This being the law it will have to be held that the decision of the Delhi High Court is erroneous and cannot be sustained and the view taken by the Punjab and Haryana High Court is correct. It will, therefore, have to be held that Managing Director of a financial corporation can be appointed as an authority under Section 32-G of the Act.

34. A Constitution Bench of the Supreme Court in **Mukesh Singh v. State (NCT of Delhi)**[11]held that merely because an officer is an informant/complainant that does not make his/her investigation tainted by bias. The question of bias will depend on facts and circumstances of each case. The relevant paragraphs are extracted below:

[11](2020) 10 SCC 120.

**12. Therefore, as such, there is no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the accused is not to be straightaway acquitted unless and until the accused is able to establish and prove the bias and the prejudice. As held by this Court in *Ram Chandra* [*State of Rajasthan* v. *Ram Chandra,* (2005) 5 SCC 151 : 2005 SCC (Cri) 1010] the question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case [see *Vipin Kumar Jain* [*Union of India* v. *Vipan Kumar Jain*, (2005) 9 SCC 579] ].**

12.1. At this stage, it is required to be noted and as observed hereinabove, the NDPS Act is a special Act with a special purpose and with special provisions including Section 68 which provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made thereunder shall be compelled to say from where he got any information as to the commission of any offence. **Therefore, considering the NDPS Act being a special Act with special procedure to be followed under Chapter V, and as observed hereinabove, there is no specific bar against conducting the investigation by the informant himself and in view of the safeguard provided under the Act itself, namely, Section 58, we are of the opinion that there cannot be any general proposition of law to be laid down that in every case where the informant is the investigator, the trial is vitiated and the accused is entitled to acquittal.**

12.2. Similarly, even with respect to offences under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. **Only in a case where the accused has been able to establish and prove the bias and/or**

**unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record.** Therefore, as rightly observed by this Court in *Bhaskar Ramappa Madar* [*Bhaskar Ramappa Madar* v. *State of Karnataka*, (2009) 11 SCC 690 : (2010) 1 SCC (Cri) 133] , the matter has to be decided on a case-to-case basis without any universal generalisation.

12.3. As rightly held by this Court in *V. Jayapaul* [*State* v. *V. Jayapaul*, (2004) 5 SCC 223 : 2004 SCC (Cri) 1607] , there is no bar against the informant police officer to investigate the case. **As rightly observed, if at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer the question of bias would depend on the facts and circumstances of each case and therefore it is not proper to lay down a broad and unqualified proposition that in every case where the police officer who registered the case by lodging the first information, conducts the investigation that itself had caused prejudice to the accused and thereby it vitiates the entire prosecution case and the accused is entitled to acquittal.**

13. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

13.1. (I) That the observations of this Court in *Bhagwan Singh* v. *State of Rajasthan* [*Bhagwan Singh* v. *State of Rajasthan*, (1976) 1 SCC 15 : 1975 SCC (Cri) 737] , *Megha Singh* v. *State of Haryana* [*Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] and *State* v. *Rajangam* [*State* v. *Rajangam*, (2010) 15 SCC 369 : (2012) 4 SCC (Cri) 714] and the acquittal of the accused by this Court

on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal.

**13.2. (II) In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-to-case basis. A contrary decision of this Court in *Mohan Lal* v. *State of Punjab* [*Mohan Lal* v. *State of Punjab*, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.**

35. Therefore, it is clear from the above decisions that merely because an officer is also the complainant, he/she will not be barred from performing other duties as prescribed under a statute. Bias cannot be presumed and a party alleging or attributing bias shall establish reasonable grounds for apprehension for such bias.

36. In the present case, merely because the complaint was lodged by an officer of the rank of Deputy Director of Enforcement and subsequently the impugned order was also passed by the same rank officer, bias cannot be presumed in the absence of any material attributing such bias to the officer.

37. Further, as stated above, though of the same rank, both the officers i.e., one who filed the complaint and one who passed the impugned order were different. Therefore, the maxim '*nemo judex in causa sua'* does not apply in cases where the designation/rank of the authority is the same but members heading them are different. Therefore, Issue No.1 is decided by holding that the impugned order was not passed in violation of principles of natural justice.

**Issue No.2:-**

38. It was contended by the Petitioner in W.P. No. 37659 of 2022 that the Deputy Director of Enforcement did not have jurisdiction to pass the impugned order as the case involved an amount of more than Rs. 10,00,00,000/- and the impugned order could have been only passed by the Additional Director of Enforcement. The said contention cannot be accepted.

39. It is relevant to note that in Supersession of notification number S.O.2564 (E), dated the 30th September, 2014 - 27.09.2018 - Ministry of Finance fixed the monetary limits for the authorized officers to conduct inquiry and levy penalty under Section 13 of the Act, 1999. The following table specifies the monetary limits:

| Sl. No. | Designation of Officers | Monetary limit |
|---|---|---|
| (1) | (2) | (3) |
| (1) | Director of Enforcement | Cases involving amount exceeding rupees twenty five crores. |
| (2) | Principal Special Director of Enforcement | Cases involving amount exceeding rupees twenty five crores. |
| (3) | Special Director of Enforcement | Cases involving amount exceeding rupees twenty five crores. |
| (4) | Additional Director of Enforcement | Cases involving amount upto rupees twenty five crores but not less than ten crores. |
| (5) | Joint Director of Enforcement | Cases involving amount upto rupees ten crores but not less than five cores. |
| (6) | Deputy Director of Enforcement | Cases involving amount upto rupees five crores and not less than two crores |
| (7) | Assistant Director of Enforcement | Cases involved of amount not exceeding rupees two crores. |

40. It is clear from the above table that a case involving an amount between Rs. 10,00,00,000/- and Rs. 25,00,00,000/- can only be decided by an Additional Director of Enforcement. Further, cases

involving an amount between Rs. 2,00,00,000/- and Rs. 5,00,00,000/- have to be decided by the Deputy Director of Enforcement.

41. In the present case, the amounts involved are as follows:

i. Delay in reporting foreign direct investment to the tune of Rs. 1,32,38,364/-
ii. Issuance of shares worth Rs. 85,45,184/-
iii. Transfer of shares worth Rs. 8,46,90,000/- in lieu of transfer of a loan amounting to Rs. 2,70,00,000/-

42. The Petitioner contended that as there was an allegation that shares worth of Rs. 8,46,90,000/- were transferred, the case involved more than Rs. 10,00,00,000/- when Rs. 1,32,38,364/- and Rs. 85,45,184/- are added to the said Rs. 8,46,90,000/-

43. Petitioner's reliance of the alleged value of shares worth Rs.8,46,90,000/- to calculate the monetary limit cannot be accepted for the simple reason that the said transfer was done in lieu of a loan arrangement worth Rs. 2,70,00,000/- The alleged amount violative of the pricing guidelines is Rs. 2,70,00,000/-

44. Therefore, the amount involved in the case is the sum of Rs. 1,32,38,364/, Rs. 85,45,184/- and Rs. 2,70,00,000/- which comes down to Rs. 4,87,83,548/- . Therefore, Issue No.2 is decided by holding that the Deputy Director of Enforcement was competent to

pass the impugned order as the amount involved in the case was Rs. 4,87,83,548/-.

45. Now coming to the main question of maintainability, this Court holds that the present writ petitions are not maintainable as the impugned order dated 05.09.2022 was passed in compliance with the principles of natural justice and within the jurisdiction prescribed under the Act, 1999.

46. The Petitioners have raised other contentions regarding forged and fabricated documents, the issue of delay in filing the complaint and the issue of quantum of penalty. This Court being bound by the decision in **Assistant Commissioner of State Tax (supra)** holds that the said issues cannot be decided by this Court in view of an efficacious alternative remedy available under Section 17(2) of the Act, 1999.

47. In result, the present writ petitions are liable to be dismissed and are accordingly dismissed. Liberty is granted to the Petitioners in both the writ petitions to raise all their grounds in appeal under Section 17(2) of the Act, 1999, if any preferred.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

**K. LAKSHMAN, J**

Date:17.04.2022

Note: **Issue copy forthwith**.

**L.R. Copy to be marked.**

b/o. vvr