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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**%** ***Judgment pronounced on: 07.07.2025***

\+ **W.P.(C) 6758/2025 and CM APPL.30662/2025**

CELEBI AIRPORT
SERVICES INDIA PRIVATE LIMITED .....Petitioner

versus

UNION OF INDIA & ORS. .....Respondents

\+ **W.P.(C) 6759/2025 and CM APPL.30664/2025**

CELEBI DELHI CARGO
TERMINAL MANAGEMENT INDIA PVT. LTD. .....Petitioner

versus

UNION OF INDIA & ORS. .....Respondents

**Presence:-** Mr. Mukul Rohatgi, Sr. Advocate along with Mr. Sandeep Sethi, Sr. Advocate, Mr. Darpan Wadhwa, Sr. Advocate, Ms. Ritu Bhalla, Mr. Sarul Jain, Mr. Sidhartha Das, Mr. Gajanand Kirodiwal, Mr. Aditya Rathee, Mr. Amer Vaid and Ms. Rea Bhail, Advocates for petitioners.

Mr. Tushar Mehta, SG along with Mr. Chetan Sharma, ASG, Mr. Amit Tiwari, CGSC, Mr. Kanu Agarwal, Mr. Amit Gupta, Mr. Bhuvan Kapoor, Mr. Aman, Mr. R. Prabhat, Mr. Saurabh Tripathi, Mr. Vinay Yadav, Mr. Shubham Sharma, Mr. Ayush Tanwar, Ms. Urja Pandey and Ms. Ayushi Srivastava, Advocates for Union of India.

Ms. Anjana Gosain, Mr. Keshav Raheja, Ms. Shreya Manjari, Advocates for R-1, 2, 3 and 5.

Mr. Sonal Kumar Singh, Advocate along with Mr. Ratik Sharma, Mr. Parth Sindhwani, Mr. Yashvardhan Singh Gohil and Mr. Puneet, Advocates for R-4.

**CORAM:**
**HON'BLE MR. JUSTICE SACHIN DATTA**

**JUDGMENT**

1. The present writ petitions have been filed by the petitioners being aggrieved by the actions undertaken by the respondents, culminating in the revocation of the petitioners' security clearance, and a directive to transfer their employees to third parties.

2. W.P. (C) No. 6758 of 2025 has been filed by Celebi Airport Services India Private Limited, a company incorporated under the Companies Act, 1956 and now governed by the Companies Act, 2013. The petitioner is engaged in providing professional ground handling services at Indira Gandhi International Airport (Delhi), Cochin International Airport, Bengaluru International Airport, Rajiv Gandhi International Airport (Hyderabad), and Goa International Airport. The petitioner operates pursuant to ground handling agreements entered into with the respective airport operators.

3. W.P. (C) No. 6759 of 2025 has been filed by Celebi Delhi Cargo Terminal Management India Private Limited, a company also incorporated under the Companies Act, 1956 and governed by the Companies Act, 2013. This petitioner is engaged in the business of providing cargo handling services at the Indira Gandhi International Airport, New Delhi, pursuant to a Concession Agreement entered between the petitioner and Delhi International Airport Limited (DIAL).

4. It is submitted that prior to entering into the said ground handling agreements and the concession agreement, the respective petitioners underwent background checks by national security agencies. Based on these verifications, the Bureau of Civil Aviation Security (BCAS)/respondent no.3

granted the petitioners security clearances, which were renewed as recently as 21.11.2022 for a period of five years.

5. In W.P. (C) No. 6758 of 2025, the petitioner is challenging order dated 15.05.2025 passed by BCAS/ respondent no. 3 whereby the security clearance provided in "r/o Celebi Airport Services India Pvt. Ltd, under the category Ground Handling Agency" has been revoked.

6. Order dated 15.05.2025 is reproduced as under –

No. BCAS-HQ/2025/security clearance GHA/RA/E-272989
भारत सरकार / GOVERNMENT OF INDIA
नागर विमानन मंत्रालय / MINISTRY OF CIVIL AVIATION
नागर विमानन सुरक्षा ब्यूरो / BUREAU OF CIVIL AVIATION SECURITY
'अ'खंड II- तल, संयुक्त कार्यालय परिसर/ 'A' Wing, II Floor, Office Complex
उड़ान भवन सफदरजंग हवाई अड्डा / Udaan Bhawan, Safdurjung Airport
नई दिल्ली - ११००० ३ / NEW DELHI –110003
Dated: 15.05.2025

**ORDER**

**Subject: Revocation of Security Clearance in r/o Celebi Airport Services India Pvt. Ltd, reg.**

Sir,

The security clearance in r/o Celebi Airport Services India Pvt. Ltd, under the category Ground Handling Agency was approved by DG, BCAS vide letter no. 15/99/2022-Delhi-BCAS/E-219110 dated 21.11.2022.

2. In the exercise of power conferred upon DG, BCAS, the security clearance in r/o Celebi Airport Services India Pvt. Ltd is hereby revoked with immediate effect in the interest of National Security.

3. This issues with the approval of DG, BCAS.

Sunil Yadav
Jt. Director(Ops)
BCAS HQ, New Delhi.

To,

CEO, M/s Celebi Airport Services India Pvt. Ltd,
Room No Ce-01, Import Building 2 International Cargo Terminal,
IGI Airport New Delhi-110037

Copy to: -

1. MoCA (kind attention: Smt. Padma Agnihotri, Under Secretary), RG Bhawan, New Delhi.
2. CSO, Celebi Airport Services India Pvt. Ltd.
3. RD, BCAS, Delhi, Bengaluru, Goa, Hyderabad & Cochin.
4. CSO, Airport Operator; Delhi, Bengaluru, Goa, Hyderabad & Cochin.

7. In W.P. (C) No. 6759 of 2025, the petitioner is challenging order dated 15.05.2025 passed by BCAS/respondent no. 3 whereby the security clearance provided in "r/o Celebi Delhi Cargo Terminal Management India Pvt. Ltd under the category Regulated Agent" has been revoked.

8. Order dated 15.05.2025 is reproduced as under –

No. BCAS-HQ/2025/security clearance-GHA/RA/E-272989
भारत सरकार / GOVERNMENT OF INDIA
नागर विमानन मंत्रालय / MINISTRY OF CIVIL AVIATION
नागर विमानन सुरक्षा ब्यूरो / BUREAU OF CIVIL AVIATION SECURITY
'अ±खंड II- तल, संयुक्त कार्यालय परिसर/ 'A' Wing, II Floor, Office Complex
उड़ान भवन सफदरजंग हवाई अड्डा / Udaan Bhawan, Safdurjung Airport
नई दिल्ली - ११०००३ / NEW DELHI –110003
Dated: 15.05.2025

**ORDER**

**Subject: Revocation of Security Clearance in r/o Celebi Delhi Cargo Terminal Management India Pvt. Ltd, reg.**

Sir,

The security clearance in r/o Celebi Delhi Cargo Terminal Management India Pvt. Ltd under the category Regulated Agent was approved by DG, BCAS vide letter no 15/216/2021-Delhi-BCAS/E-209729, dated 21.11.2022.

2. In the exercise of power conferred upon DG, BCAS, the security clearance in r/o Celebi Delhi Cargo Terminal Management India Pvt. Ltd, is hereby revoked with immediate effect in the interest of National Security.

3. This issues with the approval of DG, BCAS.

Sunil Yadav
Jt. Director(Ops)
BCAS HQ, New Delhi.

To,

CEO, M/s Celebi Delhi Cargo Terminal Management India Pvt. Ltd
Room No CE-05, First Floor Import Building II,
International Cargo Terminal IGI Airport,
New Delhi, India, Pin-110037.

Copy to: -

1. MoCA (kind attention: Smt. Padma Agnihotri, Under Secretary), RG Bhawan, New Delhi.
2. CSO, M/s Celebi Delhi Cargo Terminal Management India Pvt. Ltd.
3. CSO, Airport Operator (DIAL), Delhi.
4. RD, BCAS, Delhi.

9. It is submitted that the said decision/s was taken unilaterally, without furnishing any reasons, and more importantly, without affording the petitioners any opportunity of being heard.

10. The petitioners are also challenging a communication dated 15.05.2025 issued by Regional Director, BCAS / respondent no. 5 which provided that all Airport Entry Passes (AEPs) and Temporary Airport Entry Pass (TAEPs) issued in favour of Celebi Airport Services India Pvt. Ltd.

shall be allowed for entry into the Airport as employees of M/s Air India SATS Airport Services Pvt. Ltd and M/s Bird Worldwide Flight Services Pvt Ltd. and all AEPs and TAEPs issued in favour of the Celebi Delhi Cargo Terminal Management India Pvt. Ltd shall be allowed for entry into the Airport as employees of M/s GMR Airports Limited due to operational requirements.

11. Communication dated 15.05.2025 is reproduced as under –

> *"Sir,*
> *Ref trailing mail.*
>
> *It is clarified that:-*
>
> *1) All AEPs and TAEPs issued in favour of Celebi Cargo Terminal Management India Pvt. Ltd. (RA) shall be allowed for entry into Airport as employees of M/s GMR Airports Limited (RA) due to operational requirements and will remain valid till 19.05.2025.*
>
> *2) All AEPs and TAEPs issued in favour of Celebi Airport Services India Pvt. Ltd. (GHA) shall be allowed for entry into Airport as employees of M/s Air India SATS Airport Services Pvt. Ltd and M/s Bird Worldwide Flight Services Pvt Ltd. due to operational requirements and will remain valid till 19.05.2025.*
>
> *3). DIAL is directed to share list of employees of Celebi Airport Services India Pvt. Ltd. (GHA) who are taken over by existing GHAs namely M/s Air India SATS Airport Services Pvt. Ltd and M/s Bird Worldwide Flight Services Pvt Ltd by return mail.*
>
> *With Regards"*

12. The said impugned orders and communication were duly responded by the petitioners on the same day.

13. It has also been pointed that a day prior to the passing of the impugned orders the petitioners' holding company, Celebi Aviation Holding, made a detailed representation on 14.05.2025 to BCAS/ respondent

no. 3. The said representation is reproduced as under-

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14 May 2025

Mr Rajesh Nirwan
The Director General
BUREAU OF CIVIL AVIATION SECURITY (BCAS).

**Subject:** Clarification on Celebi Aviation's Position and Ownership

**Dear Sir,**

I write to you with deep concern regarding recent developments following the unfortunate geopolitical situation. In the aftermath, there have been increasing calls on social media and elsewhere to remove or boycott businesses perceived to be of Turkish origin. This includes Celebi Aviation, which has been the subject of inaccurate and misleading narratives online and in parts of the media.

At the outset, I wish to state unequivocally that Celebi Aviation and its associated entities are purely commercial in nature. We have no political affiliations, nor do we subscribe to or align with any political stance or ideology—whether domestic or foreign.

While Celebi Aviation Holding, the ultimate parent company of our India operations, is incorporated in Turkey, it is important to clarify that over 65% of its ownership rests with international institutional investors. These include respected blue-chip funds based in Canada, the United States, Singapore, the UAE, and Western Europe. To support this, I have enclosed two disclosure documents:

1. A certification from TMF Group, fund administrators for Actera Partners II L.P., detailing their 50% ownership in Celebi Holding.
2. A document from Amicorp, administrators for Alpha Airport Services BV, reflecting their 15% ownership stake.

In India, Celebi is very much a domestic operation—run by Indian professionals and fully aligned with local business norms and regulations. Our investments have always followed FIPB clearance and FDI guidelines. Our Indian portfolio includes three major corporate entities and three smaller ones, including a significant cargo warehousing joint venture with Delhi International Airport, India's largest airport operator. All our companies operating in India are security cleared by the Indian Government agencies and all our employees have gone through stringent verifications and cleared before being deployed.

In 2022, acting on guidance from BCAS, we implemented all recommended data security measures, including relocating our Disaster Recovery systems to a hosting service based in India.

Celebi is the largest investor in this sector and has invested over USD 250 million in India and currently employs approximately 10,000 Indian citizens. We remain committed to India and to contributing meaningfully to its aviation infrastructure and employment landscape as we have done over the last 17 years.

Recently, we were requested by the regulator to submit our concession agreements and customer airline contracts. While we are fully compliant and cooperative, such requests—amid the prevailing narrative—are naturally causing concern. Hence, we are reaching out to seek a fair and open opportunity to present the facts and clarify our position.

We are confident that the Government of India and the relevant Ministries will evaluate the matter with objectivity and fairness, based on facts. The current media rhetoric and online commentary are not only misleading but also harmful to the trust and goodwill we have genuinely built over the years.

We sincerely look forward to the opportunity to engage further and assure you of our transparency, commitment, and continued investment in India.

Warm regards,

**Murali Ramachandran**
President – India & SE Asia
Celebi Aviation Holding

Enclosures:

1. A certification from TMF Group, fund administrators for Actera Partners II L.P., detailing their 50% ownership in Celebi Holding.
2. A document from Amicorp, administrators for Alpha Airport Services BV, reflecting their 15% ownership stake.

14. However it is submitted that despite the same, no opportunity for hearing was granted, nor was the representation responded to, before the impugned actions were taken on 15.05.2025.

## SUBMISSIONS ON BEHALF OF THE PETITIONERS

15. Learned senior counsel for the petitioners has submitted as under:-

i. The petitioners have been rendering ground handling and cargo handling services at airports in India for the last 17 years, after

obtaining the requisite security clearances. It is submitted that the petitioners' record has been unblemished, with no complaints against its services, and that the security clearances granted to the petitioners have never been recalled, suspended or terminated.

ii. It is submitted that the impugned orders dated 15.05.2025 are violative of the principles of natural justice for the following reasons:

a) The impugned orders came as "a bolt from the blue";

b) No show cause notice was given to the petitioners;

c) No opportunity of hearing was granted to the petitioners;

d) The impugned orders do not disclose any reasons.

e) The impugned orders also violate the provisions of the Aircraft (Security) Rules, 2023 (hereinafter *"2023 Rules"*), particularly Rule 12 which provides as follows:-

> *"12. Power to suspend or cancel security clearance and security programme - (1) The Director General, after giving the entity an opportunity of being heard, and for reasons to be recorded in writing, may suspend for a period not exceeding one year or cancel or impose conditions in respect of any security clearance granted or security programme approved under these rules, where he has any reasonable grounds to believe and considers such action necessary, in the interests of national security or civil aviation security or if the entity has contravened or failed to comply with any condition of security clearance or security programme or provision of these rules.*
>
> *(2) After conducting an enquiry by an officer authorised by the Director General, the suspension may be revoked or the security clearance or security programme may be cancelled."*

The mandate of Rule 12 allows suspension or cancellation of a security clearance by BCAS only:

- After affording the entity an opportunity of being heard;
- For reasons to be recorded in writing;

- Where BCAS has the discretion to either suspend the security clearance for a period of one year, cancel it, or impose conditions thereon; and
- If BCAS has reasonable grounds to believe that such action is necessary in the interest of national security.

The 2023 Rules do not provide for any exception or exemption from compliance with the mandatory requirements of Rule 12. The provisions are *ex facie* mandatory, and there is nothing in the said Rules to suggest or imply that compliance with Rule 12 is optional or merely directive. It is submitted that compliance with the principles of natural justice has been held to be mandatory even in the absence of an express provision, particularly in cases where the impugned order results in civil consequences or affects the civil rights of the concerned entity. In the present case, the legal position is even stronger, as there is an express provision, i.e., Rule 12 of the 2023 Rules, mandating compliance with the principles of natural justice.

iii. It is submitted that any order passed in violation of principles of natural justice is void. The Impugned Orders, having been passed in breach of the Rule 12 of the Aircrafts (Security) Rules 2011/2023, which mandates compliance with the principles of natural justice, is void, and not merely voidable or curable. It is settled law that any order passed without affording a hearing to the affected party is rendered void, a nullity, and *non est*; and no prejudice needs to be proved as the denial of natural justice is, in itself sufficient prejudice. In support of the aforesaid submissions, learned senior counsel for the

petitioners has relied upon the following judgments :

a) ***Union Carbide Corporation & Ors vs. UOI & Ors*** (1991) 4 SCC 584[1]

b) ***RB Shriram Durga Prasad Vs. Settlement Commissioner***, (1989) 1 SCC 628[2].

c) In ***Rajasthan State Road Transport Corporation and Anr vs. Bal Mukund Bairwa*** (2009)4 SCC 299[3].

iv. Strenuous reliance has also been placed on ***Gorkha Security Services vs. Govt. (NCT of Delhi)***, (2014) 9 SCC 105, in which the Supreme Court has held as under:-

> *"16. It is a common case of the parties that the blacklisting has to be preceded by a show cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting many civil and stroke or evil consequences follow. It is described as a "civil death" of a*

[1] 160. These are all accepted principles. Their wisdom, variety and universality in the discipline of law are well established. Omission to comply with the requirements of the rules of Audi alterum partum, as a general rule vitiates a decision. Where there is violation of natural justice no resultant or independent prejudice need to be shown as the denial of natural justice is, in itself sufficient prejudice and it is no answer to say that even with observance of natural justice the same conclusion would have been reached. The citizen "is entitled to be under the rule of law and not the rule of discretion" and "to remit the maintenance of constitutional right to judicial discretion is to shift the foundations of freedom from the rock to the sand".

[2] 7. We are definitely of the opinion that on the relevant date when the order was passed that is to say, 24-08-1977 the order was a nullity because it was in violation of principles of natural justice. See in this connection the principles enunciated by this court in State of Orissa v Dr. Binapani Dei as also the observations in administrative law by H. W. R Wade, 5th edition, pp. 310-311 that the act in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice is void or of no value. In Ridge vs Baldwin and Anisminic Ltd. vs. Foreign Compensation Commission the House of Lords in England has made it clear that a breach of natural justice nullifies the order made in breach. If that is so then the order made in violation of the principles of natural justice was of no value.....

[3] 35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In A.R.Antulay this court held: (SCC p 660, para 55)

"55.... No prejudice need to be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of principles of natural justice renders the act a nullity".

*person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debar such a person from participating in government tenders which means precluding him from the award of government contracts.*

*xxx* *xxx* *xxx*

*21. The central issue, however pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged reaches and defaults he has committed so that he gets an opportunity to rebut the same. Another requirement according to us is the nature of the action which is proposed to be taken for such a breach. That should also be stated so that the notice is able to point out that proposed action is not warranted in the given case even if the default stroke breaches complaint of a not satisfactorily explained. When it comes to blacklisting this requirement becomes all the more imperative having regard to the facts that it is the harshest possible action.*

*22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the ground on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfill the requirements of principles of natural justice show-cause notice should meet the following two requirements viz:*

*(i) The material/grounds to be stated which according to the department necessitates and action;*

*(ii) particular penalty /action which is proposed to be taken. It is this second requirement that the High Court has failed to omit.*

*We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."*

It is submitted that even in cases of emergent situations where prompt action may be necessary, the legal position remains that the principles of natural justice must be complied with. While the notice may not be elaborate

and the opportunity of hearing need not be extensive, a substantive opportunity must nonetheless be granted. The person concerned must be informed of the allegations against them, and the material in support thereof must also be shared. In this regard reliance is placed on the judgment of the Supreme Court in ***S.L. Kapoor Vs Jagmohan & Ors*** (1980) SCC Online SC 272, wherein it has been held as under:

> *"11. Another submission of the learned Attorney General was that Section 238(1) also contemplated emergent situations where swift action might be necessary to avert disaster and that in such situations if the demands of natural justice were to be met, the very object of the provision would be frustrated. It is difficult to visualise the sudden and calamities situations gloomily foreboded by the learned Attorney General where there would not be enough breathing time to observe natural justice at least in a rudimentary way. A municipal committee under the Punjab municipal act is a public body consisting of both officials and non-officials and one cannot imagine anything momentous being done in a matter of minutes and seconds. And, natural justice may always be tailored to the situation. Minimal natural justice, the barest notice and the "littlest" opportunity in the shortest time may serve. The authority acting under section 238(1) is the master of its own procedure. There need be no oral hearing. It is not necessary to put every detail of the case to the committee: broad ground sufficient to indicate the substance of the allegations may be given. We do not think that even minimal natural justice is excluded when alleged grave situations arise under section 238. If indeed such grave situations arise the public interest can be sufficiently protected by appropriate prohibitory and mandatory action under the other relevant provisions of the statute in Sections 232 to 235 of the Act.....*
>
> *xxx xxx xxx*
>
> *24 ……In our view the principles of natural justice know of no exclusionary rule depending on whether it would have made any difference if natural justice had been observed. The non observance of natural justice is itself prejudice to any man and proof of prejudice independently of the proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on admitted undisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its write*

*to compel the observance of natural justice not because it is not necessary to observe natural justice but because courts do not issue futile writs.....”*

Copious reliance has also been placed on the judgment of the Supreme Court in ***Madhyamam Broadcasting Ltd. v. Union of India***, 2023 INSC 324, particularly on the following observations therein:

*“47. The judgment of this Court in Maneka Gandhi (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. The facet of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing.*

*xxx* *xxx* *xxx*

*58. MHA disclosed the material forming the opinion for denying of security clearance solely to the High Court. The High Court instead of deciding if any other less restrictive but equally effective means could have been employed, straight away received the material in a sealed cover without any application of mind. It is now an established principle*

> *of natural justice that relevant material must be disclosed to the affected party. This rule ensures that the affected party is able to effectively exercise their right to appeal. When the state government claims non-disclosure on the ground of public interest under Section 124 of the Evidence Act, the material is removed from the trial itself. As opposed to this method, when relevant material is disclosed in a sealed cover, there are two injuries that are perpetuated. First, the documents are not available to the affected party. Second, the documents are relied upon by the opposite party (which is most often the state) in the course of the arguments, and the court arrives at a finding by relying on the material. In such a case, the affected party does not have any recourse to legal remedies because it would be unable to (dis)prove any inferences from the material before the adjudicating authority.*
>
> *59. This form of adjudication perpetuates a culture of secrecy and opaqueness, and places the judgment beyond the reach of challenge. The affected party would be unable to "contradict errors, identify omissions, challenge the credibility of informants or refute false allegations". The right to seek judicial review which has now been read into Articles 14 and 21 is restricted. A corresponding effect of the sealed cover procedure is a non-reasoned order….."*

Reliance has also been placed on paragraph 75 of ***Madhyamam Broadcasting Ltd*** (supra) to contend that the observations of the Supreme Court in ***Ex-Armymen's Protection Services (P) Ltd. v. Union of India***, (2014) 5 SCC 409, cannot be read so as to preclude/absolve the State from its duty to act fairly merely because the issue involves consideration of national security. The observations relied upon by the petitioners are as under:-

> *"75.. The contention of the respondent that the judgment of this Court in Ex-Armymen's Protection Services (supra) held that the principles of natural justice shall be excluded when concerns of national security are involved is erroneous. The principle that was expounded in that case was that the principles of natural justice may be excluded when on the facts of the case, national security concerns outweigh the duty of fairness. Thus, national security is one of the few grounds on which the right to a reasonable procedural guarantee may be restricted. The mere involvement of issues concerning national security would not preclude the State's duty to act fairly. If the State discards its duty to act fairly, then it must be justified before the court on the facts of the case. Firstly,*

*the State must satisfy the Court that national security concerns are involved. Secondly, the State must satisfy the court that an abrogation of the principle(s) of natural justice is justified. These two standards that have emerged from the jurisprudence abroad resemble the proportionality standard. The first test resembles the legitimate aim prong, and the second test of justification resembles the necessity and the balancing prongs."*

v. It is submitted that in terms of the dicta laid down in ***Madhyamam Broadcasting Ltd*** (supra), it is incumbent on this Court to assess the material cited by the authority in support of its plea of national security and confidentiality, and to determine whether such a plea is genuine. It is submitted that the matters concerning national security are justiciable, and the authority cannot be given a carte blanche merely because according to them national security was involved.

vi. It has also been contended by Mr. Rohatgi that the respondents have acted in haste in the present matter and based its decision on public perception rather than objective consideration. He submits that the same is clearly not permissible and for this purpose reliance is placed on the observations of the Supreme Court in ***S.G Jaisinghani vs U.O.I*** (1967) SCC OnLine SC 6[4], ***Zenit Mataplast Pvt. Ltd. vs. State of Maharashtra*** (2009)10 SCC 388[5] and ***Nidhi Kaim and Anr. Vs. State of Madhya***

[4] 14. In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law discretion conferred with executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decision should be made by application of known principles and rules and, in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle without any rule it is unpredictable and such a decision in the antithesis of a decision taken in accordance with Rule of law.....

[5] 27. Every action of the State or its instrumentalities should not only be fair legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias favoritism and nepotism. The decision should be made by the application of known principles and rules and in general such decision should be predictable and the citizen should know where he is but if a decision is taken without any principle or without any rule it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.....

***Pradesh and Ors.*** (2017) 4 SCC 1[6].

vii. During the course of arguments on 21.05.2025 and 23.05.2025, it was specifically argued by Mr. Mukul Rohatgi that in absence of at least a gist of the adverse material against the petitioners being provided, so as to enable the petitioners to meet the case against it, it is not even permissible for the Court to peruse the relevant security inputs which led to the denial of security clearance. It is further submitted that in absence of the petitioners being furnished at least with gist of allegations against it, the petitioners are "fighting with its hands tied behind its back". It is vehemently submitted that the impugned action is required to be struck down for violation of the basic and cardinal principles of natural justice. In response to a specific query, it was stated that the petitioners do not seek a post-decisional hearing.

viii. It is submitted that the twin aspect *viz*. non-providing of gist of allegations to the petitioners and non-adherence to Rule 12 of the 2023 Rules, render the impugned action void *ab initio.*

ix. During the course of arguments on 23.05.2025, it was contended by Mr. Rohatgi that the 2023 Rules cannot be circumvented under any

[6]78. In view of the position expressed by this Court, in the above judgments, it was submitted, that public perception should not be allowed to weigh so heavy, in the mind of a Court, as would prevent it, from rendering complete justice. According to learned Counsel, taking into consideration public perception, would render effectuating justice, extremely difficult. It was pointed out, that by sheer experience gained by Judges, they were fully equipped to determine at their own whether or not the facts of a case required to be dealt with differently, Under Article 142-so as to render complete justice.

79. It was also the contention of learned Counsel that public perception was usually not based on a complete data of the dispute. And, unless the public was provided with the complete facts, and was required to consciously take a call on the matter, the perception entertained by the public would be fanciful and imaginative and it would be full of deficiencies and inadequacies and it may also be an opinion based on lack of rightful understanding.

80. We are of the view that public perception despite being of utmost significance cannot be sought except after an onerous exercise. And that, any opinion, without the benefit of the entire sequence of facts, may not be a dependable hypothesis. It is also true that disseminating full facts for seeking public opinion would be an immeasurably daunting task. An endeavour, which was unlikely to yield any reasoned response, based on logic and rationale. We are accordingly of the view, that the suggestion of learned Counsel needs to be respected, and we should attempt a consideration at our own based on our experience and training, in adjudicating disputes of unlimited variety..... and of inestimable proportions.

circumstance. It is pointed out that the power to issue directions under Section 6 of the Bharatiya Vayuyan Adhiniyam, 2024 (hereinafter "*the 2024 Act*") is hedged with the limitation that such directions must be "consistent with the provisions of this Act and the Rules made therein". Further, Rule 62 of the 2023 Rules itself provides that any direction issued by the Director General must be "consistent with the provisions of the Act and the Rules made thereunder". As such, it is contended that the impugned action is not referable to the power conferred under Section 6 of the 2024 Act. It is submitted that the power to issue directions "as contained in Section 6 of the 2024 Act" is found in multiple and various legislations in India for example, Delhi Development Act, 1957, the New Delhi Municipal Council Act, 1994, UP Urban Planning and Development Act, 1973.

x. Reliance is placed on ***Poonam Verma and Ors. Vs. Delhi development Authority,*** (2007) 13 SCC 154[7], to contend that the power to issue directions is in respect of "Policy decision and general directions". It is submitted that the power to issue directions cannot be invoked in individual cases. Furthermore, it is submitted that even if such a power exists, it must be exercised in conformity with the applicable rules.

xi. During the course of rejoinder arguments, it was reiterated that the dicta laid down in ***Madhyamam Broadcasting Ltd*** (supra), clearly applies to the present case and cannot be disregarded just because ***Madhyamam***

[7]13. Having failed to establish any legal right in themselves as also purported deficiency in services on the part of the respondent before competent legal forums, they took recourse to remedies on administrative side which stricto sensu were not available. It has not been shown as to on what premise the Central Government can interfere with the day to day affairs of the respondent. Section 41 of the Act, only envisages that the respondent would carry out such directions that may be issued by the Central Government from time to time for the efficient administration of the Act. The same does not take within its fold an order which can be passed by the Central Government in the matter of allotment of flats by the Authority. Section 41 speaks about policy decision. Any direction issued must have a nexus with the efficient administration of the Act. It has nothing to do with carrying out of the plans of the authority in respect of a particular scheme.

***Broadcasting Ltd*** (supra) dealt with a situation involving security clearance for a television channel, whereas the present case concerns ground handling and cargo handling operations at an airport.

xii. It is further submitted that paragraph 9 of the security clearance granted to the petitioners *vide* order dated 21.11.2022 in terms of which the "Director General, BCAS reserves right to revoke the security clearance at any time without assigning any reasons thereof, in the interest of national/civil aviation security", does not detract from the mandatory requirements of Rule 12. It is submitted that Rule 12 cannot be construed as merely directory. In the circumstances, it is submitted that the petition is liable to be allowed.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

16. Learned Solicitor General, on behalf of the respondents, submits as under:-

i. The respondents have been conferred with wide-ranging plenary powers under the statutory scheme of both the Aircraft Act, 1934 ("1934 Act") and the Bharatiya Vayuyan Adhiniyam, 2024 ("2024 Act"). Section 5A(1A) of the 1934 Act, and Section 6 read with Section 10 of the 2024 Act, unequivocally empower the Central Government and relevant authorities to act decisively in matters concerning the security of India and the security of civil aviation operations. Specifically, under Section 5A(1A) of the 1934 Act, the Director General of Bureau of Civil Aviation Security is authorised to, issue directions, by order, with respect to matters specified in

clauses (gc) and (qc) of sub-section (2) of Section 5 of the 1934 Act, in any case where the Director General of Bureau of Civil Aviation Security is satisfied that it is necessary to do so in the interest of the security of India or to ensure the security of civil aviation operations. Similarly, under the 2024 Act, the Director General of Bureau of Civil Aviation Security is authorised to issue directions, by order, with respect to matters specified in clauses (o) and (ze) of sub-section (2) of Section 10 of the 2024 Act, in any case where he is satisfied that such action is necessary in the interest of national security or civil aviation safety. This statutory framework confirms that the power exercised in such cases is plenary in nature and is not contingent upon preconditions such as those laid down in Rule 12 of the Aircraft (Security) Rules, 2023, which, in any event, cannot limit powers conferred under the parent legislation.

ii. It is submitted that the petitioner is a company engaged in providing ground handling services at various airports in India, having direct access to every part of an airport, including aircraft, passengers, and sensitive zones such as the tarmac. The petitioner, therefore, has unrestricted access to critical areas of civil aviation and directly interacts with passengers from the moment they enter the airport until they board the aircraft, including access to the cargo hold. The existence of plenary powers in such a context is intended to address any emergent situations, given the intrinsically sensitive nature of the subject matter. Further, as a matter of legislative practice, such plenary powers are preserved by authorities in laws governing sensitive sectors, since the grants made under such frameworks are

not substantive legislative creations of rights, but rather confer privileges. Accordingly, the grant of permission to provide ground handling services under the relevant scheme constitutes a privilege extended by the respondent authorities, one that can be withdrawn for valid reasons arising from national security concerns.

iii. It is submitted that these powers are also aligned with India's international obligations under Annexure 17 of the *Convention on International Civil Aviation* (12th Ed., 2022), which mandates contracting states to ensure civil aviation security, including control of access to restricted areas and the conduct of background checks on individuals. The petitioner, being a ground handling agency with access to sensitive airport zones and aircraft, operates in a domain where national security concerns may necessitate swift executive action. The grant of such privileges is administrative in nature and revocable; it does not constitute a vested legal right.

iv. It is submitted that while the petitioners argue that the lack of an opportunity to be heard violates the principles of natural justice, it is trite law that such principles are not absolute and must yield to considerations of national security. In ***Ex-Armymen's Protection Services (P) Ltd.*** (supra), the Supreme Court held that in subject matters of aviation where a national security concerns arises, the observance of the principles of natural justice may be excluded, as national security is a matter of executive policy, not judicial determination. This view has been consistently reaffirmed, including in ***Digi Cable Network (India) (P) Ltd. v. Union of India***, (2019) 4 SCC 451, and ***Madhyamam Broadcasting Ltd***. (supra), wherein the

Court emphasised the limited scope of judicial scrutiny when executive decisions are based on national security grounds.

Specific attention is drawn to the following observations made in ***Ex-Armymen's Protection Services (P) Ltd.*** (supra) –

> *"15. It is difficult to define in exact terms as to what is "national security". However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.*
>
> *16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy of State for Home Deptt. v. Rehman [(2003) 1 AC 153: (2001) 3 WLR 877: (2002) 1 All ER 122 (HL)]: (AC p. 192C)*
>
> > *"... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."*
>
> *17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."*

Reliance is also placed in case of ***Sublime Software Ltd. v. Union of India***, 2024 SCC OnLine Del 4640, wherein this Court has held as under:

> *"7. At the outset it is to be stated that in matters of national security, principles of natural justice can be given a go-by. It is well settled that the right to a fair hearing may have to yield to overriding considerations of national security. According to Sir William Wade [H.W.R. William Wade and C.F. Forsyth, Administrative Law (10th Edn.. Oxford*

*University Press Inc., 2009) 468-470], any restriction, limitation or exception on principles of natural justice is "only an arbitrary boundary". To quote further:*

> *"The right to a fair hearing may have to yield to overriding considerations of national security. The House of Lords recognised this necessity where civil servants at the government communications headquarters, who had to handle secret information vital to national security, were abruptly put under new conditions of service which prohibited membership of national trade unions. Neither they nor their unions were consulted, in disregard of an established practice, and their complaint to the courts would have been upheld on ground of natural justice, had there not been a threat to national security. The factor which ultimately prevailed was the danger that the process of consultation itself would have precipitated further strikes, walkouts, overtime bans and disruption generally of a kind which had plagued the communications headquarters shortly beforehand and which were a threat to national security. Since national security must be paramount, natural justice must then give way.*
>
> *The Crown must, however, satisfy the court that national security is at risk. Despite the constantly repeated dictum that 'those who are responsible for the national security must be the sole Judges of what the national security requires', the court will insist upon evidence that an issue of national security arises, and only then will it accept the opinion of the Crown that it should prevail over some legal right.""*

v. It is submitted that the Court has further held that such exclusions may be implicit in law and need not be expressly stated. The principle has jurisprudential support, including from UK judgments like ***Secy. of State for Home Deptt. v. Rehman***, (2003) 1 AC 153. It is submitted that while judiciary is empowered to examine the material in a sealed cover to ensure fairness, such material need not be disclosed to the affected party. It is averred that the petitioners' reliance on ***Madhyamam Broadcasting Ltd.*** (supra), is misplaced, as that case was grounded in free speech under Article 19(1)(a), unlike

the present matter, which pertains to ground handling operations where no fundamental right is directly engaged.

vi. It is contended that the doctrine of proportionality is inapplicable in the present case. The petitioners, being juristic entities wholly owned by Turkish companies, cannot invoke rights under Article 19 of the Constitution. It is submitted that the Supreme Court has consistently held that the fundamental rights under Article 19 are available only to Indian citizens. Therefore, the proportionality analysis applicable in cases involving free speech or privacy does not govern the present factual scenario.

vii. It is the case of the respondents that in matters involving national security, the obligation to disclose reasons is necessarily subject to the overriding imperative of public interest. Courts have long acknowledged the need to strike a balance between the principles of administrative transparency and the demands of national security. In ***Conway v. Rimmer***, (1968) AC 910, a view later adopted by the Supreme Court in ***S.P. Gupta v. Union of India***, 1981 Supp SCC 87, it was held that disclosure may be legitimately withheld if it would cause greater harm to public service or jeopardise national safety. Similarly, in ***R.K. Jain v. Union of India***, (1993) 4 SCC 119, the Hon'ble Supreme Court observed that the Court must determine which aspect of public interest, transparency or national security, takes precedence in a given case. In the present matter, the respondents have submitted the relevant material to this Court in sealed cover, in accordance with established judicial practice, thereby ensuring effective judicial review while safeguarding sensitive and

classified information.

viii. It is submitted that the petitioners' reliance on Rule 12 of the 2023 Rules is misplaced, as the Rule does not prescribe any penal consequence for non-compliance and must, therefore, be construed as directory rather than mandatory. Moreover, even where the term "shall" is used in statutory language, the Courts have, in various instances, interpreted such provisions as directory, particularly where strict adherence would defeat the object of the legislation or result in procedural deadlock. The objective of Rule 12 cannot override the broader statutory mandate conferred under Sections 6 and 10 of the 2024 Act. In cases involving national security, Rule 12 must be interpreted in a manner that advances, rather than frustrates, the statutory purpose.

ix. It is submitted that the judgment of the Supreme Court in ***Madhyamam Broadcasting Ltd***. (supra) far from supporting the case of the petitioners, in fact reinforces the case of the respondents. It is submitted that the said judgment affirms that the principles of natural justice may be excluded, on grounds of national security; the said national security considerations would outweigh the duty of fairness. In this regard reliance is placed on the following observations of ***Madhyamam Broadcasting Ltd***. (supra), which reads as under:-

> *"75 The contention of the respondent that the judgment of this Court in Ex-Armymen's Protection Services (supra) held that the principles of natural justice shall be excluded when concerns of national security are involved is erroneous. The principle that was expounded in that case was that the principles of natural justice may be excluded when on the facts of the case, national security concerns outweigh the duty of fairness. Thus, national security is one of the few grounds on which the right to a*

*reasonable procedural guarantee may be restricted. The mere involvement of issues concerning national security would not preclude the state'sduty to act fairly. If the State discards its duty to act fairly, then it must be justified before the court on the facts of the case. Firstly, the State must satisfy the Court that national security concerns are involved. Secondly, the State must satisfy the court that an abrogation of the principle(s) of natural justice is justified. These two standards that have emerged from the jurisprudence abroad resemble the proportionality standard. The first test resembles the legitimate aim prong, and the second test of justification resembles the necessity and the balancing prongs.*

*xxx xxx xxx*

*L Conclusion and Directions*

*170 In view of the discussion above, the appeals are allowed and the order of the MIB dated 31 January 2022 and the judgment of the High Court dated 2 March 2022 are set aside. We summarise our findings below:*

*xxx xxx xxx*

*(ii) The challenge to the order of the MIB and judgment of the High Court on procedural grounds is allowed for the following reasons:*

*xxx xxx xxx*

*(c) The judgments of this court in Ex-Armymen's Protection Services (supra) and Digi Cable Network (supra) held that the principles of natural justice may be excluded when on the facts of the case, national security concerns overweigh the duty of fairness;"*

x. It is submitted that the doctrine of proportionality, which is usually applied in the context of infringement of Fundamental Rights under Article 21 and 19, would not apply in the present case. It is further submitted that in any event, Article 19 rights are not available to the petitioners since the petitioners are wholly owned and controlled by a Turkish incorporated companies. Additionally, the petitioners are not natural person/s. It is submitted that the well-settled position of law is that a foreign company cannot invoke Fundamental Rights under

Part-III of the Constitution. Additionally, the juristic persons are not entitled to Fundamental Rights under Article 19 of the Constitution. In this regard reliance is placed on the judgment of the Supreme Court in case of ***Divl.Forest Officer v. Bishwanath Tea Co. Ltd.***, 1981 3 SCC 238, ***British India Steam Navigation Co. Ltd. v. Jasjit Singh***, AIR 1964 SC 1451, ***State Trading Corporation of India Ltd. v. Commercial Tax Officer***, AIR 1963 SC 1811, ***Tata Engineering and Locomotive Co. Ltd. v. State of Bihar***, 1964 6 SCR 885, ***Indian Social Action Forum (INSAF) v. Union of India***, 2020 SCC OnLine SC 310 and ***Star India Private Ltd. v. The Telecom Regulatory Authority of India and Others***, 2008 146 DLT 455.

xi. It is submitted that the Supreme Court has recognised that the Rules of natural justice are not rigid and inflexible and requires suitable modulation in appropriate circumstances. In this regard reliance is placed on the judgment of the Supreme Court in ***Karnataka SRTC v. S.G. Kotturappa***, 2005 3 SCC 409, ***Board of Mining Examination and Chief Inspector of Mines v. Ramjee***, 1977 2 SCC 256, ***M Sarat Kumar Dash v. Biswajit Patnaik***, 1995 Supp (1) SCC 434 and ***Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi***, 1991 2 SCC 716.

xii. It is further submitted that an exception ought to be carved out under Rule 12 of the Airport Security Rules, 2023 and statutory exclusions must be read into the said rules. In this regard, reliance is placed on paragraph 17 of the judgment in ***Ex-Armymen's Protection Services***

***(P) Ltd.*** (supra)[8].

xiii. It is further submitted that Rule 12 of the 2023 Rules must be construed to be directory and not mandatory since no consequence is provided for breach thereof. It is submitted that in any enactment in general, a provision is mandatory when consequence of non-compliance is provided and generally directory, when consequence of non-compliance is not provided. It is submitted that no such consequence is stipulated in Rule 12 and therefore, the provision is merely directory in nature, especially in cases wherein national security concerns come to the force.

xiv. Lastly, it is emphasised that Clause 9 of the Security Clearance renewal order dated 21.11.2022, itself provides for "cancellation without assigning any reasons thereof". Thus, it is submitted that even while granting the Security Clearance, the right to cancel/withdraw the same "without assigning any reason" was expressly reserved. It is submitted that the same is necessitated on account of inherent national security and civil aviation security considerations.

xv. It is submitted that the present situation cannot be equated with one where only the civil rights of citizens are involved, without any interplay of national security considerations. In the circumstances, it is submitted that the present petition is liable to be dismissed.

[8]17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the state is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party.

## ANALYSIS AND REASONING

17. Admittedly, the petitioners require a security clearance for providing ground handling services at airport/s where it operates. Admittedly also, the services provided by the petitioners enable it to have access to high security/sensitive areas of the airport/s. A ground handling agent, *inter alia*, provides ramp handling services which include aircraft services, aircraft cleaning, loading and unloading of passenger baggage for both passenger and commercial aircraft, loading and unloading of cargo etc.

18. In addition, a ground handling agent provides traffic handling services, which encompass manning of check-in counters, verification of travel documents, marshaling at airport/s, transportation of passengers and baggage from the aircrafts to the terminal building and vice versa.

19. Given that the petitioners have untrammeled access to sensitive/high security areas of the airports, there is no controversy that a security clearance is required for the petitioners to provide the concerned ground handling and cargo services.

20. Rule 15 of the Aircraft (Security) Rules, 2011 framed in exercise of the powers conferred by Section 4 read with Section 5 of the Aircrafts Act, 1934, specifically provides that "no ground handling service provider shall be allowed to provide ground handling in any aerodrome without obtaining a security clearance and approval of its security programme from the Director General".

21. In the Aircraft (Security Rules), 2023 (hereinafter "*Rules 2023*") framed in exercise of the powers conferred by Section 4, 5, 10(2), 10A, 10B, 12, 12A, 12B read with Section 14 of the Aircrafts Act 1934, it was

specifically provided as under:

> *"**15. Operation of entities at aerodrome**.—No aerodrome operator shall himself operate at the aerodrome or allow any entity or person to operate, provide services or facilities, at security restricted areas of an aerodrome without obtaining security clearance and approval of security programme as applicable and specified by the Director General."*

22. Rule 12 of the Rules 2023 also specifically provides as under:

> ***"12. Power to suspend or cancel security clearance and security programme**.—(1) The Director General, after giving the entity an opportunity of being heard, and for reasons to be recorded in writing, may suspend for a period not exceeding one year or cancel or impose conditions in respect of any security clearance granted or security programme approved under these rules, where he has any reasonable grounds to believe and considers such action necessary, in the interests of national security or civil aviation security or if the entity has contravened or failed to comply with any condition of security clearance or security programme or provision of these rules.*
>
> *(2) After conducting an enquiry by an officer authorised by the Director General, the suspension may be revoked or the security clearance or security programme may be cancelled."*

23. The primary contention on behalf of the petitioners is that the cancellation of the petitioners' security clearance is not in consonance with the procedure contemplated under the aforesaid Rule 12 of the Rules, 2023, inasmuch as no opportunity of hearing whatsoever was afforded to the petitioners. It is emphasized that the principles of natural justice, on which the aforesaid Rule 12 is predicated, are sacrosanct, and the infraction thereof renders the impugned action null and void.

## **Principles of Natural Justice are the cornerstone of our Constitutional Framework ; however, their application is contextual and cannot be put in a straitjacket**

24. There can be no cavil with the proposition that the principles of natural justice are sacrosanct and flow from the principle of reasonableness

that is embedded in Article 14 of the Constitution of India. It is now well-settled that the principle of reasonableness that is guaranteed under Article 14 of the Constitution of India runs through the entire chapter of fundamental rights guiding the exercise of both procedural and substantive limitations.

25. In ***Maneka Gandhi Vs. Union of India,*** (1978) 1 SCC 248, the Court, relying on ***R.C. Cooper Vs. Union of India***, (1970) 1 SCC 248, it was observed as under -

> *"5……. we find that even on principle the concept of reasonableness must be projected in the procedure contemplated by Article 21, having regard to the impact of Article 14 on Article 21.*
>
> *xxx xxx xxx*
>
> *7……..The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.*
>
> *xxx xxx xxx*
>
> *82. So I am convinced that to frustrate Article 21 by relying on any formal adjectival statute, however, flimsy or fantastic its provisions be, is to rob what the constitution treasures. Procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Thus understood, "procedure" must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised processes. You cannot claim that it is a legal procedure if the passport is granted or refused by taking lots, or deal of fire or by other strange or mystical methods. Nor is it tenable if life is taken by a crude or summary process of enquiry. What is fundamental is life and liberty. What is procedural is the manner of its exercise. This quality of fairness in the*

*process is emphasised by the strong word "established" which means "settled firmly" not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes "established" procedure. And "law" leaves little doubt that it is normae regarded as just since law is the means and justice is the end.*

*83. Is there supportive judicial thought for this reasoning? We go back to the vintage words of the learned Judges in A.K. Gopalan and zigzag through R.C. Cooper to S.N. Sarkar and discern attestation of this conclusion. And the elaborate constitutional procedure in Article 22 itself fortifies the argument that "life and liberty" in Article 21 could not have been left to illusory legislatorial happenstance. Even as relevant reasonableness informs Articles 14 and 19, the component of fairness is implicit in Article 21. A close-up of the Gopalan case is necessitous at this stage to underscore the quality of procedure relevant to personal liberty.*

*84. Procedural safeguards are the indispensable essence of liberty. In fact, the history of personal liberty is largely the history of procedural safe guards and right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights; observance of fundamental rights is not regarded as good politics and their transgression as bad politics. I sometimes pensively reflect that people's militant awareness of rights and duties is a surer constitutional assurance of Governmental respect and response than the sound and fury of the "question hour" and the slow and unsure delivery of court writ. "Community Consciousness and the Indian Constitution" is a fascinating subject of sociological relevance in many areas.*

*85. To sum up, "procedure" in Article 21 means fair, not formal procedure. "Law" is reasonable law, not any enacted piece. As Article 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detentions should conform to Article 22. It has been rightly pointed out that for other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are available. Otherwise, as the procedural safeguards contained in Article 22 will be available only in cases of preventive and punitive detention, the right to life, more fundamental than any other forming part of personal liberty and paramount to the happiness, dignity and worth of the individual, will not be entitled to any procedural safeguard save such as a legislature's mood chooses. In Kochuni [Kavalappara Kottarathil Kochuni v. States of Madras and Kerala, AIR 1960 SC 1080, 1093 : (1960) 3 SCR 887 : (1961) 2 SCJ 443.] the Court, doubting the correctness of the Gopalan decision on this aspect, said:*

*"Had the question been res integra, some of us would have been inclined to agree with the dissenting view expressed by Fazal Ali, J.*

*xxx. xxx xxx*

*89. It is a mark of interpretative respect for the higher norms our founding fathers held dear in effecting the dearest rights of life and liberty so to read Article 21 as to result in a human order lined with human justice. And running right through Articles 19 and 14 is present this principle of reasonable procedure in different shades. A certain normative harmony among the articles is thus attained, and I hold Article 21 bears in its bosom the construction of fair procedure legislatively sanctioned. No Passport Officer shall be mini-Caesar nor Minister incarnate Caesar in a system where the rule of law reigns supreme.*

*90. My clear conclusion on Article 21 is that liberty of locomotion into alien territory cannot be unjustly forbidden by the establishment and passport legislation must take processual provisions which accord with fair norms, free from extraneous pressure and, by and large, complying with natural justice. Unilateral arbitrariness, police dossiers, faceless affiants, behind-the-back materials, oblique motives and the inscrutable face of an official sphinx do not fill the "fairness" bill — subject, of course, to just exceptions and critical contexts. This minimum once abandoned, the Police State slowly builds up which saps the finer substance of our constitutional jurisprudence. Not party but principle and policy are the key-stone of our Republic.*

*91. Let us not forget that Article 21 clubs life with liberty and when we interpret the colour and content of "procedure established by law" we must be alive to the deadly peril of life being deprived without minimal processual justice, legislative callousness despising "hearing" and fair opportunities of defence. And this realization once sanctioned, its exercise will swell till the basic freedom is flooded out. Hark back to Article 10 of the Universal Declaration to realize that human rights have but a verbal hollow if the protective armour of audi alteram partem is deleted. When such pleas are urged in the familiar name of pragmatism, public interest or national security, courts are on trial and must prove that civil liberties are not mere rhetorical material for lip service but the obligatory essence of our hard-won freedom. A Republic— if you can keep It—is the caveat for Counsel and Court. And Tom Paine, in his Dissertation on first Principles of Government, sounded the tocsin:*

*"He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty, be establishes a precedent that will reach to himself."*

*Phoney freedom is not worth the word and this ruling of ours is not confined to the petitioner but to the hungry job-seeker, nun and nurse,*

*mason and carpenter, welder and fitter and, above all, political dissenter. The last category, detested as unreasonable, defies the Establishment's tendency to enforce through conformity but is the resource of social change. "The reasonable man", says G.B. Shaw:*

*"adapts himself to the world; the unreasonable one persists in trying to adapt the world to himself. Therefore, all process depends on the unreasonable man. [ George Bernard Shaw in Maxims for Revolutionists] "*

*"Passport" peevishness is a suppressive possibility, and so the words of Justice Jackson (U.S. Supreme Court) may be apposite:*

*"Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. [West Virginia State Board of Education v. Barnette, 391 US 624 (1943)] "*

*92. Under our constitutional order, the price of daring dissent shall no be passport forfeit.*

*93. The impugned legislation, Sections 5, 6 and 10 especially, must be tested even under Article 21 on canons of processual justice to the people outlined above. Hearing is obligatory—meaningful hearing, flexible and realistic, according to circumstances, but not ritualistic and wooden. In exceptional cases and emergency situations, interim measures may be taken, to avoid the mischief of the passportee becoming an escapee before the hearing begins. "Bolt the stables after the horse has been stolen" is not a command of natural justice. But soon after the provisional seizure, a reasonable hearing must follow, to minimise procedural prejudice. And when a prompt final order is made against the applicant or passport holder the reasons must be disclosed to him almost invariably save in those dangerous cases where irreparable injury will ensue to the State. A Government which revels in secrecy in the field of people's liberty not only acts against democratic decency but busies itself with its own burial. That is the writing on the wall if history were teacher, memory our mentor and decline of liberty not our unwitting endeavour. Public power must rarely hide its heart in an open society and system.*

26. The judgment in ***Maneka Gandhi*** (supra) established that the procedural fairness is an ongoing constitutional mandate and that the principles of natural justice must be read into any procedure that affects fundamental rights under Article 21 of the Constitution of India. Further, it has been observed in ***Madhyamam*** (supra) as under:-

> *"47. The judgment of this Court in Maneka Gandhi (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14,19 and 21. The facet of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the-core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing."*

27. In ***M/s R.B. Shreeram Durga Prasad and Fatehchand Nursing Das Vs. Settlement Commission (IT&WT) and Another***, (1989) 1 SCC 628, it has been held as under:

> *"7. We are definitely of the opinion that on the relevant date when the order was passed, that is to say 24-8-1977 the order was a nullity because it was in violation of principles of natural justice. See in this connection, the principles enunciated by this Court in State of Orissa v. Dr (Miss) Binapani Dei as also the observations in Administrative Law by H. W. R. Wade, 5th edn., pp. 310-311, that the act in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice is void or of no value. In Ridge v. Baldwin and Anisminic Ltd. v. Foreign Compensation Commission the House of Lords in England has made it clear that breach of natural justice nullifies the order made in breach. If that is so then the order made in violation of the principles of natural justice was of no value. If that is so*

*then the application made for the settlement under Section 245-C was still pending before the Commission when the amendment made by Finance Act of 1979 came into effect and the said amendment being procedural, it would govern the pending proceedings and the Commission would have the power to overrule the objections of the Commissioner. Dr V. Gauri Shankar, appearing for the revenue, did not seriously contest that position. He accepted the position that the law as it is, after the amendment authorises the Commission to consider and overrule the Commissioner's objection. He also very fairly, in our opinion and rightly accepted the position that the appellant was entitled to be heard on the Commissioner's objections. It appears to us, therefore, if that is the position then, in our opinion, the appellant was entitled to be heard on the objections of the Commissioner. As mentioned hereinbefore, the only short ground which was sought to be canvassed before us was whether after the amended Act the order had been rightly set aside and whether the appellant had a right to be heard on the objections of the Commissioner. Mr Harish Salve, counsel for the appellant contends that it had a right to be heard. On the other hand Dr V. Gauri Shankar, learned counsel for the respondents submitted that the order proceeded on the assumption that the objections had been heard. He did not, in fairness to him it must be conceded, contest that in a matter of this nature the appellant had a right to be heard. Reading the order, it appears to us, that though the appellant had made submissions on the Commissioner's objections but there was no clear opportunity given to the appellant to make submissions on the Commissioner's objections in the sense to demonstrate that the Com-missioner was not justified in making the objections and secondly, the Commission should not accept or accede to the objections in the facts and circumstances of the present case. We are of the opinion that in view of the facts and circumstances of the case and in the context in which these objections had been made, it is necessary as a concomitant of the fulfilment of natural justice that the appellant should be heard on the objections made by the Commissioner. It is true that for the relevant orders for the years for which the Commissioner had objected the concealment had been upheld in the appeal before the appropriate authorities. But it may be that in spite of this concealment it may be possible for the appellant to demonstrate or to submit that in dis-closure of concealed income for a spread over period settlement of the entire period should be allowed and not bifurcated in the manner sought to be suggested for the Commissioner's objections. This objection the appellant should have opportunity to make. In exercise of our power of judicial review of the decision of the Settlement Com-mission we are concerned with the legality of procedure followed and not with validity of the order. See the observations of Lord Hailsham in Chief Constable of the North Wales Police v. Evans. Judicial review is concerned not*

*with the decision but with the decision making process."*

28. In ***Union Carbide Corporation and Others v. Union of India and Others***, (1991) 4 SCC 584, it has been held as under:

> *"160. These are all accepted principles. Their wisdom, verity and universality in the discipline of law are well established. Omission to comply with the requirements of the rule of audi alteram partem, as a general rule, vitiates a decision. Where there is violation of natural justice no resultant or independent prejudice need be shown, as the denial of natural justice is, in itself, sufficient prejudice and it is no ans-wer to say that even with observance of natural justice the same conclusion would have been reached. The citizen "is entitled to be under the Rule of Law and not the Rule of Discretion" and "to remit the maintenance of constitutional right to judicial discretion is to shift the foundations of freedom from the rock to the sand".*

29. In ***Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa,*** (2009) 4 SCC 299, it has been held as under:

> *"35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In A.R. Antulay this Court held: (SCC p. 660, para 55)*
>
> *"55. …..No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity.""*

30. In ***Gorkha Security Services V. Government (NCT of Delhi) And Others,*** 2014 9 SCC 105, the Court has observed as under –

> ***"Necessity of serving show-cause notice as a requisite of the principles of natural justice***
>
> *16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating*

*in government tenders which means precluding him from the award of government contracts.*

*17. Way back in the year 1975, this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , highlighted the necessity of giving an opportunity to such a person by serving a show-cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person. This is clear from the reading of paras 12 and 20 of the said judgment. Necessitating this requirement, the Court observed thus: (SCC pp. 74-75)*

> *"12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.*
>
> ***
>
> *20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."*

***18.*** *Again, in Raghunath Thakur v. State of Bihar [(1989) 1 SCC 229] the aforesaid principle was reiterated in the following manner: (SCC p. 230,*

*para 4)*

> *"4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of."*

***19.*** *Recently, in Patel Engg. Ltd. v. Union of India [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445] speaking through one of us (Jasti Chelameswar, J.) this Court emphatically reiterated the principle by explaining the same in the following manner: (SCC pp. 262-63, paras 13-15)*

> *"13. The concept of 'blacklisting' is explained by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] as under: (SCC p. 75, para 20)*
>
> *'20. Blacklisting has the effect of preventing a person from the*

*privilege and advantage of entering into lawful relationship with the Government for purposes of gains.'*

*14. The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case [ "12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation."(Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , [(1975) 1 SCC 70], SCC p. 74, para 12)] and took note of the constitutional provision (Article 298) [ "**298.Power to carry on trade, etc**.—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose: Provided that—(a) the said executive power of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and(b) the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."] , which authorises both the Union of India and the States to make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though*

*nobody has any right to compel the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual relationships. [ "17. The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. The privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation."(Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , [(1975) 1 SCC 70], SCC p. 75, para 17)]] The effect of excluding a person from entering into a contractual relationship with the State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.*

*15. It follows from the above judgment in Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors."*

***20.*** *Thus, there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated*

*the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in Patel Engg. [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445]*

***Contents of the show-cause notice***

*21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.*

*22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:*

*(i) The material/grounds to be stated which according to the department necessitates an action;*

*(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.*

*We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.*

*xxx xxx xxx*

*28. In the instant case, no doubt the show-cause notice dated 6-2-2013 was served upon the appellant. Relevant portion thereof has already been extracted above (see para 5). This show-cause notice is conspicuously silent about the blacklisting action. On the contrary, after stating in detail*

> *the nature of alleged defaults and breaches of the agreement committed by the appellant the notice specifically mentions that because of the said defaults the appellant was "as such liable to be levied the cost accordingly". It further says "why the action as mentioned above may not be taken against the firm, besides other action as deemed fit by the competent authority". It follows from the above that main action which the respondents wanted to take was to levy the cost. No doubt, the notice further mentions that the competent authority could take other actions as deemed fit. However, that may not fulfil the requirement of putting the defaulter to the notice that action of blacklisting was also in the mind of the competent authority. Mere existence of Clause 27 in the agreement entered into between the parties, would not suffice the aforesaid mandatory requirement by vaguely mentioning other "actions as deemed fit". As already pointed out above insofar as penalty of blacklisting and forfeiture of earnest money/security deposit is concerned it can be imposed only, "if so warranted". Therefore, without any specific stipulation in this behalf, the respondent could not have imposed the penalty of blacklisting.*
>
> *29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice."*

31. In ***Madhyamam*** (supra), the Supreme Court has explained that the principles of natural justice are imperative not only for the purposes of achieving a fair outcome but also in view of the inherent value of procedural fairness. It was emphasized that fair procedure is not only a means to the end of achieving a fair outcome, but is an end in itself inasmuch as it imparts legitimacy to the decision making process.

32. Further, compliance with the principles of natural justice preserves the integrity of the system, as the decision, in addition to being fair, also "appears" to be fair. The relevant observations in ***Madhyamam*** (supra) are as under:-

*” 34 This case presents the Court with an opportunity to clarify and lay down the law on the applicability of the principles of natural justice when issues of national security are involved. The Court must choose between the two visions of either permitting a complete abrogation of the principles of natural justice or attempting to balance the principles of natural justice with concerns of national security. It is imperative that we analyse the purpose natural justice serves, and the jurisprudential development of procedural due process before choosing between these two competing visions.*

***E. 1 Principles of natural justice: purpose and content***

*35. The principles of natural justice were read into the law and conduct of judicial and administrative proceedings with an aim of securing fairness. These principles seek to realise the following four momentous purposes:*

*36 Fair Outcome: Procedural rules are established to prevent the seepage of bias and unfairness in the process of decision making. A decision that is reached after following the procedural rules is expected to be fair. An outcome that is reached through a fair process is reliable and accurate. In the context of criminal proceedings, procedural rules are prescribed in the Indian Evidence Act 1872 and the Code of Criminal Procedure 1973 to secure the ‘correct’ outcome and to identify the ‘truth’.*

*37. In **Chief Constable of North Wales Police v. Evans** the appellant was a probationary member of the North Wales Police Force. He was removed from the force without putting forth the allegations against him. The House of Lords set aside the decision on the ground that the non-disclosure of allegations was violative of the principles of natural justice. The Court cautioned that there was an extreme danger in proceeding without putting forth the allegations against him because the veracity of the allegations could never be tested:*

> *"As an example of the extreme danger of proceeding in this way, it must be observed that, as one of the two clinching matters which seem to have influenced him, the appellant says in his affidavit: "Further, it became known" (sic) "to senior officers that the applicant and his wife had lived a 'hippy' type life-style at TyddynMynyddig Farm, Bangor. This had never been put to the respondent at all, and had the appellant or his deputy to whom he delegated the inquiry taken the trouble to ask the respondent about it, he would have discovered at once that this allegedly clinching allegation was palpably untrue, and simply the result of a mistaken address. It was, in short, an utterly incorrect statement relied upon precisely owing to the failure of natural justice of which complaint is made."*

*38. Inherent value in fair procedure: Fair procedure is not only a means to the end of achieving a fair outcome but is an end in itself. Fair procedure induces equality in the proceedings. The proceedings 'seem' to be and are seen to be fair. In Kanda v. Government of Malaya, an Inspector of Police challenged his dismissal on the ground that the disciplinary proceedings were*

> *not conducted in accordance with the principles of natural justice. It was contended that he did not have knowledge of the contents of the enquiry report that was before the adjudicating officer. The crux of the case was whether his lack of knowledge of the contents of the report led to a likelihood of bias - both conscious and unconscious. The Court held that the likelihood of bias test cannot be solely used to determine the violation of natural justice. The Court held that it is not necessary that the accused must prove bias or prejudice. Rather, it is sufficient if the non-disclosure would lead to a possibility of bias and prejudice since "no one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing." The House of Lords held that non-disclosure of information is per se violative of the principles of fair trial.*
>
> *39. Legitimacy of the decision and decision making authority: When a decision is formed following the principles of natural justice, there is a perception that the decision is accurate and just. It preserves the integrity of the system as the decisions, in addition to being fair, also 'appear' to be fair. The perception of the general public that the decisions appear to be fair is important in building public confidence in institutions, which aid in securing the legitimacy of the courts and other decision making bodies.*
>
> *40. Dignity of individuals: Non-outcome values, that is, values that are independent of the accuracy and soundness of the verdict, are intrinsically important The principles of fairness 'express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one."*

33. At the same time, it has been recognized that principles of natural justice are not in the nature of an inflexible dogma; they have to be tailored depending upon the facts and circumstances. These principles may also yield in exceptional circumstances. In ***Madhyamam*** (supra) it has also been acknowledged that the Courts, both in India and abroad, have demonstrated considerable flexibility in the application of the principles of natural justice by fine tuning them to situational variations. It has been acknowledged that the concept of natural justice cannot be put into a straitjacket formula and is incapable of a precise definition. It was observed as under:-

> *"42. The duty to act fairly that is derived from common law is not exhaustively defined in a set of concrete principles. Courts, both in India and abroad, have demonstrated considerable flexibility in the application of the principles of natural justice by fine-tuning them to*

> *situational variations. This Court has observed earlier that the concept of natural justice cannot be put into a 'straitjacket formula and that it is incapable of a 'precise definition'. Courts have undertaken an ends-based reasoning to test if the action violates the common law principle of natural justice. The party alleging a violation of a principle of natural justice has to prove that the administrative action violated the principles of natural justice and that non-compliance with natural justice prejudiced the party. The courts, while assessing prejudice, determine if compliance of the principles of natural justice could have benefitted the party in securing a just outcome. It needs to be seen if this content of natural justice and the standard for judicial review of non-compliance has undergone a change after principles of natural justice were constitutionalized in Maneka Gandhi v. Union of India."*

34. In ***Karnataka SRTC v. S.G. Kotturappa***, (2005) 3 SCC 409, it has been held as under:

> *"……..The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula….."*

35. In that case, the Court held that since there was already an objective criterion which stood fulfilled for the purpose of taking action against the respondents, there was no necessity of giving further opportunities to the respondents therein prior to taking up the requisite action. The said judgment emphasizes that these principles cannot be put in any straitjacket formula and have to be tailored depending upon the facts and circumstances of each case.

36. Likewise, in case of ***The Chairman, Board of Mining Examination and Chief Inspector of Mines and Anothers vs. Ramjee***, (1977) 2 SCC 256, while taking note of the contentions based on alleged infraction of principles of natural justice, it was held as under:

> *"15. These general observations must be tested on the concrete facts of each case and every minuscule violation does not spell illegality. It the totality of circumstances satisfies the Court that the party visited with*

*adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."*

37. Again, the aforesaid observations make the point that the principles of natural justice, though sacrosanct, have to be moulded and applied depending upon the peculiar factual context of each case.

## NATURAL JUSTICE AND NATIONAL SECURITY

38. In the present case, indisputably, the petitioners were not afforded opportunity of hearing before revocation of the security clearance granted to them. The ostensible basis for this is that the said action was necessitated on account of urgent and pressing national security considerations. In this context, two questions squarely arise for consideration:

(i) whether national security considerations can afford an exception to the principles of natural justice?
(ii) to what extent is the existence of national security considerations (warranting cancellation/revocation of the petitioners' security clearance), justiciable in a Court of law?

### Whether national security considerations can afford an exception to the principles of natural justice

39. This issue has come up for consideration in a number of cases, in different contexts. In ***Ex-Armymen's Protection Services Private Ltd. v. Union of India and Others*** (supra) the applicant therein had been granted the business of ground handling services. Rule 92 of the applicable Aircraft Rules stipulated that provision of ground handling services shall be subject to the security clearance of the Central Government. The said security

clearance was subsequently withdrawn in "national interest". The applicant initiated proceedings under Article 226 of the Constitution of India before the High Court of Patna. The said petition was disposed of with directions that at least the gist of the allegations should be disclosed to the petitioners. The Single Judge expressed the view that the principles of natural justice must be read into any administrative action that visits a person with civil consequences, unless such procedure is excluded by any statute. However, it was also observed that if there are justifiable facts indicating a threat to national security, then, nobody, including a Court, can insist on compliance with the principles of natural justice as a pre-condition for taking any action resulting in adverse civil consequences. In appellate proceedings, a Division Bench of the High Court took the view that there were many more materials available in the files which could not be disclosed in national interest to the appellant and hence, the impugned action was justified. It was held that:

> *"... The learned Single Judge, after perusal of the allegations in the sealed cover, we are disposed to think, has not taken it seriously on the ground that the allegations were to please the politicians, etc. The same is not actually correct. We have already, after perusal of the report, stated earlier that it contains many more things and the basic ingredients of security are embedded in it. The report is adverse in nature. It cannot be said to be founded on irrelevant factors. We are disposed to think that any reasonable authority concerned with security measures and public interest could have taken such a view. The emphasis laid in the report pertains to various realms and the cumulative effect of the same is the irresistible conclusion that it is adverse to security as has been understood by the authority. This Court cannot disregard the same and unsettle or dislodge it as if it is adjudicating an appeal.""*

40. In the aforesaid context, the matter was considered by the Supreme Court and it was observed as under:

> *"11. It is now settled law that there are some special exceptions to the principles of natural justice though according to Sir William Wade [ H.W.R. William Wade and C.F. Forsyth, Administrative Law (10th Edn., Oxford University Press Inc., 2009) 468-470] , any restriction, limitation or exception on principles of natural justice is "only an arbitrary boundary". To quote further:*
>
> > *"The right to a fair hearing may have to yield to overriding considerations of national security. The House of Lords recognised this necessity where civil servants at the government communications headquarters, who had to handle secret information vital to national security, were abruptly put under new conditions of service which prohibited membership of national trade unions. Neither they nor their unions were consulted, in disregard of an established practice, and their complaint to the courts would have been upheld on ground of natural justice, had there not been a threat to national security. The factor which ultimately prevailed was the danger that the process of consultation itself would have precipitated further strikes, walkouts, overtime bans and disruption generally of a kind which had plagued the communications headquarters shortly beforehand and which were a threat to national security. Since national security must be paramount, natural justice must then give way.*
> >
> > *The Crown must, however, satisfy the court that national security is at risk. Despite the constantly repeated dictum that 'those who are responsible for the national security must be the sole Judges of what the national security requires', the court will insist upon evidence that an issue of national security arises, and only then will it accept the opinion of the Crown that it should prevail over some legal right.""*

41. The Supreme Court also took note of the judgment of House of Lords in ***Council of Civil Service Unions v. Minister for Civil Service***, 1985 AC 374: (1984) 3 WLR 1174: (1984) 3 All ER 935 (HL) which itself relied upon the judgment of the Privy Council in ***the Zamora*** (1916) 2 AC 77 (PC), wherein it was observed as under:

> *"13. The Privy Council in Zamora [(1916) 2 AC 77 (PC)] , held as follows at AC p. 107:*
>
> *"… Those who are responsible for the national security must be the sole*

*Judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public.""*

42. The Court also took note of the judgment in ***Secy. of State for Home Deptt. vs. Rehman***, (2001) 3 WLR 877 and concluded as under:-

*"17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."*

43. In ***Madhyamam Broadcasting Ltd. v. Union of India*** (supra) while placing reliance on ***Digi Cable Network (India) Private v. Union of India***, AIR 2019 SC 455, it was observed as under:

*"64 In Digi Cable Network (supra), the permission that was granted to the appellant for operating as a Multi-Systems Operator in the Digital Addressable System was cancelled on the ground that MHA denied security clearance to the appellant. The High Court rejected the challenge to the order of cancellation. The Additional Solicitor General filed a copy of the reasons for the denial of security clearance in a sealed cover before this Court. A two-Judge Bench of this Court dismissed the appeal by relying on the judgment in Ex-Armymen's Protection Services (supra) holding that the appellant was not entitled to claim any prior notice before the order cancelling the permission was passed :*

> *"16. Having perused the note filed by the Union of India, which resulted in the cancellation of permission, we are of the considered opinion that in the facts of this case, the appellant was not entitled to claim any prior notice before passing of the cancellation order in question.*
>
> *17. In other words, we are of the view that the principles of natural justice were not violated in this case in the light of the law*

*laid down by this Court in Ex-Armymen's Protection Services (P) Ltd. Inasmuch as the appellant was not entitled to claim any prior notice before cancellation of permission."*

*65 The observation in Ex-Armymen's Protection Services (supra) that what is in national security is a question of policy and not law for the courts to decide was affirmed in the majority opinion in Justice KS Puttaswamy (5J) v. Union of India while deciding on the constitutional validity of Section 33 of the Aadhar Act."*

44. The relevant portion of ***Justice KS Puttaswamy (5J) v. Union of India***, (2019) 1 SCC 1 is reproduced as under –

*"406. Main contention of the petitioners in challenging the provisions of sub-section (2) of Section 33 is that no definition of national security is provided and, therefore, it is a loose ended provision susceptible to misuse. It is also argued that there is no independent oversight disclosure of such data on the ground of security and also that the provision is unreasonable and disproportionate and, therefore, unconstitutional.*

*407. We may point out that this Court has held in Ex-Armymen's Protection Services (P) Ltd. v. Union of India that what is in the interest of national security is not a question of law but it is a matter of policy. We would like to reproduce the following discussion therefrom : (SCC p. 416, paras 16-17)*

*"16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman : (AC p. 192-C, para 50)*

*'50. … [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.'*

*17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided*

> *in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."*

45. As regards the meaning of the expression "national security" in ***Ex-Armymen's Protection Services (P) Ltd.*** (supra), it was observed as under:

> *"15. It is difficult to define in exact terms as to what is "national security". However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc."*

46. The expression "national security" subsumes within its scope the "security of the state". In ***Romesh Thappar vs. State of Madras***, 1950 SCC OnLine SC 19, it was held that the expression "security of state" subsumes a distinct category of those offences against public order which endanger the security of the State. Relevant portion of the judgment is reproduced as under –

> *"7. "Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context. In the classification of offences in the Penal Code, for instance, Chapter XIV enumerates the "offences affecting the public health, safety, convenience, decency, and morals" and it includes rash driving or riding on a public way (Section 279) and rash navigation of a vessel (Section 280), among others, as offences against public safety, while Chapter VI lists waging war against the Queen (Section 121), sedition (Section 124-A), etc. as "offences against the State", because they are calculated to undermine or affect the security of the State, and Chapter VIII defines "offences against the public tranquillity" which include unlawful assembly (Section 141), rioting (Section 146), promoting enmity between*

> *classes (Section 153-A), affray (Section 159), etc. Although in the context of a statute relating to law and order "securing public safety" may not include the securing of public health, it may well mean securing the public against rash driving on a public way and the like, and not necessarily the security of the State. It was said that an enactment which provided for drastic remedies like preventive detention and ban on newspapers must be taken to relate to matters affecting the security of the State rather than trivial offences like rash driving or an affray. But whatever ends the impugned Act may have been intended to subserve, and whatever aims its framers may have had in view, its application and scope cannot, in the absence of limiting words in the statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the State. Nor is there any guarantee that those authorised to exercise the powers under the Act will in using them discriminate between those who act prejudicially to the security of the State and those who do not."*

47. In ***Ram Manohar Lohia v. State of Bihar***, AIR 1965 SCC OnLine SC 9, the Supreme Court distinguished between the expressions "security of the state", "law and order" and "public order"; it was observed that the disorder/s effecting the security of the state are more aggravated then disorder/s that effects public order or law and order. It was observed as under:

> *"55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."*

48. Various foreign judgments (which have been elaborately discussed herein below) have also attempted to determine the contours of what is

subsumed within the expression "national security".

49. In ***Madhyamam*** (supra), it has been observed as under:

> *"84. Thus, the expression national security does not have a fixed meaning. While courts have attempted to conceptually distinguish national security from public order, it is impossible (and perhaps unwise) to lay down a text-book definition of the expression which can help the courts decide if the factual situation is covered within the meaning of the phrase. The phrase derives its meaning from the context. It is not sufficient for the State to identify its purpose in broad conceptual terms such as national security and public order…."*

50. The interplay between the principles of natural justice and national security also came up for consideration before this Court in ***Sublime Software v. Union of India***, 2024 SCC OnLine Del 4640, wherein, taking note of the judgment of the ***Ex-Armymen's Protection Services (P) Ltd.*** (supra), it was observed as under:

> *"12.…As held by the Apex Court in Ex-Armymen's Protection Services (supra) the principles of natural justice can be given a go-by in the matters related to security and sovereignty of the country…."*

51. It is apparent from the dicta laid down in the aforesaid cases and also in ***Madhyamam*** (supra) (which has been discussed separately hereinbelow), that in matters pertaining to the security of the realm, the principles of natural justice must yield to preservation of natural security. This position has been affirmed and recognised not only by the Courts in India, but also in other jurisdictions such as the UK and USA. The relevance of judicial pronouncements by foreign Courts in this regard have been taken note of in ***Madhyamam*** (supra) in the following terms:-

> *"41. Indian Courts have been significantly influenced by the courts in England on the interpretation, application, and content of natural justice, primarily because the principles are derived from common law and are grounded in the rule of law. The jurisprudential developments across other common law jurisdictions relating to the principles of*

*natural justice usually, if not always, spill over to Indian jurisdiction."*

**Legal Position as enunciated by Courts in United Kingdom**

52. The ***Zamora*** (supra), is an authority for the proposition that the issues relating to the national security, are primarily for the executive to decide and those considerations were capable of justifying departure from the principles of natural justice. In the ***Zamora*** (supra), a Swedish steamship, carrying around 400 tons of copper from New York to Stockholm, was intercepted by a British cruiser. The cargo comprising copper was consigned to a Swedish company. The vessel was seized and brought to a British port for inspection, and a writ was filed in the Prize Court seeking condemnation of the ship and cargo as contraband, or alternatively, their detention or sale. While awaiting adjudication, the War Department sought an interlocutory order to requisition the copper cargo, offering to deposit its value in court. The Swedish Trading Company objected to the same. The Prize Court, ruled in favour of the Crown, holding that the copper should be released and delivered to the Crown. The case eventually reached the Privy Council, wherein it was observed as under -

> *"With regard to the first of these limitations, their Lordships are of opinion that the judge ought, as a rule, to treat the statement on oath of the proper officer of the Crown to the effect that the vessel or goods which it is desired to requisition are urgently required for use in connection with the defence of the realm, the prosecution of the war, or other matters involving national security, as conclusive of the fact. This is so in the analogous case of property being requisitioned under the municipal law (see Warrington L.J. in the case of In re A Petition of Right , already cited), and there is every reason why it should be so also in the case of property requisitioned under the international law. Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a Court of law or otherwise discussed in public."*

53. In ***Regina v. Secretary of State for Home Affairs***, (1977) 1 WLR

766, the case involved deportation of the United States citizen who had been working in England as a journalist for three years, engaged in investigative journalism. In the said judgment the salutary nature of the principles of natural justice was explained as under:

> *"It is of course well known that the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done. It is well enough known that one of the rules generally accepted in the bundle of the rules making up natural justice is the rule which requires that a person accused should have a fair and full disclosure to him of the case which is made against him. Perhaps the two most important rules of natural justice are, first, that a person accused must be given a fair statement of the case against him, and, secondly, that he must be given a fair hearing for the case which he proposes to put up himself."*

54. After noticing that principles of natural justice are flexible and were necessarily required to be adapted to the relevant factual conspectus, it was observed as under -

> *"Thus, the rules are flexible and must be adjusted to a particular case. That at once draws attention to the fact that this is a case in which issues of national security are raised, and* ***one can go through the authorities and find almost literally dozens of cases in which it has been recognised over the years that where matters affecting public security are in issue, and where the responsible minister has certified that in his opinion the matters should not be disclosed, then they will not be disclosed****."*

55. In his concurring judgment, it was observed by Lord Denning as under:

> *"But this is no ordinary case. It is a case in which national security is involved: and our history shows that, when the state itself is endangered, our cherished freedoms may have to take second place. Even natural justice itself may suffer a set-back. Time after time Parliament has so enacted and the courts have loyally followed. In the first world war in Rex v. Halliday [1917] A.C. 260, 270 Lord Finlay L.C. said: "The danger of espionage and of damage by secret agents ... had to be guarded against." In the second world war in Liversidge v. Sir John Anderson [1942] A.C. 206, 219 Lord Maugham said:*

> *"... there may be certain persons against whom no offence is proved nor any charge formulated, but as regards whom it may be expedient to authorise the Secretary of State to make an order for detention."*
>
> *That was said in time of war. But times of peace hold their dangers too. Spies, subverters and saboteurs may be mingling amongst us, putting on a most innocent exterior. They may be endangering the lives of the men in our secret service, as Mr. Hosenball is said to do."*

56. It was further observed as under:

> *"The information supplied to the Home Secretary by the Security Service is, and must be, highly confidential. The public interest in the security of the realm is so great that the sources of the information must not be disclosed — nor should the nature of the information itself be disclosed — if there is any risk that it would lead to the sources being discovered. The reason is because, in this very secretive field, our enemies might try to eliminate the sources of information. So the sources must not be disclosed. Not even to the House of Commons. Nor to any tribunal or court of inquiry or body of advisers, statutory or non-statutory. Save to the extent that the Home Secretary thinks safe. Great as is the public interest in the freedom of the individual and the doing of justice to him, nevertheless in the last resort it must take second place to the security of the country itself. So much so that arrests have not been made, nor proceedings instituted, for fear that it may give away information which must be kept secret. This is in keeping with all our recent cases about confidential information. When the public interest requires that information be kept confidential, it may outweigh even the public interest in the administration of justice. I gave the instances in D. v. National Society for the Prevention of Cruelty to Children [1976] 3 W.L.R. 124, 132–134."*

57. In the concurring opinion of Geoffrey Lane L.J, it was observed as under:

> *"There are occasions, though they are rare, when what are more generally the rights of an individual must be subordinated to the protection of the realm. When an alien visitor to this country is believed to have used the hospitality extended to him so as to present a danger to security, the Secretary of State has the right and, in many cases, has the duty of ensuring that the alien no longer remains here to threaten our security. It may be that the alien has been in the country for many years. It may be that he has built a career here in this country, and that consequently a deportation order made against him may result in great*

*hardship to him. It may be that he protests that he has done nothing wrong so far as this country's security is concerned. It may be that he protests that he cannot understand why any action of this sort is being taken against him. In ordinary circumstances common fairness — you can call it natural justice if you wish — would demand that he be given particulars of the charges made against him; that he be given the names of the witnesses who are prepared to testify against him and, indeed, probably the nature of the evidence which those witnesses are prepared to give should also be delivered to him. But there are counter-balancing factors.*

*Detection, whether in the realms of ordinary crime or in the realms of national security, is seldom carried out by cold analysis or brilliant deduction. Much more frequently it is done by means of information received. Courts of criminal jurisdiction have for very many years indeed, if not for centuries, given protection from disclosure to sources of information. One can see that in Rex v. Hardy (1794) 24 State Tr. 199, 808, which was cited by Lord Simon of Glaisdale in Reg. v. Lewes Justices, Ex parte Secretary of State for Home Department [1973] A.C. 388, 407.*

*The reasons for this protection are plain. Once a source of information is disclosed, it will cease thereafter to be a source of information. Once a potential informant thinks that his identity is going to be disclosed if he provides information, he will cease to be an informant. The life of a known informant may be made, to say the least, very unpleasant by those who, for reasons of their own, wish to remain in obscurity. Thus, take away the protection, and you remove the means of detection; and, when the security of the country is involved, there may be added difficulties. It may well be that if an alien is told with particularity what it is said he has done it will become quite obvious to him from whence that information has been received. The only person who can judge whether such a result is likely is the person who has in his possession all the information available. That, in this case, is the Secretary of State himself. If he comes to the conclusion that for reasons such as those which I have just endeavoured to outline he cannot afford to give the alien more than the general charge against him, there one has the dilemma. The alien certainly has inadequate information upon which to prepare or direct his defence to the various charges which are made against him, and the only way that could be remedied would be to disclose information to him which might probably have an adverse effect on the national security. The choice is regrettably clear: the alien must suffer, if suffering there be, and this is so on whichever basis of argument one chooses.*

*xxx* *xxx* *xxx*

> *Different principles and strict principles apply where matters of the safety of the realm are at stake. What is fair cannot be decided in a vacuum: it has to be determined against the whole background of any particular case. The advisory panel system is an effort to ensure fairness as far as possible in these difficult circumstances, but in the end it is the Secretary of State who must in those circumstances be trusted to speak the last word.*

58. Again, in the concurring opinion of Cumming Bruce LJ, while taking note of the salutary nature of the principles of natural justice, it was observed as under:

> *"In my view, the field of judicial scrutiny by reference to the enforcement of the rules of common fairness, is an extremely restricted field in the sphere of the operations necessary to protect the security of the state. There is a certain range of such operations which depend for their efficacy entirely on secrecy, and they are none the less important for that reason."*

59. In ***Council of Civil Service Unions and Ors. Vs. Minister for the Civil Service***, (1985) A.C. 374, the controversy arose in the backdrop of instructions issued by the Minister of Civil Service to the effect that the employees of Government Communications Headquarters cannot be part of trade unions. The decision was challenged on the ground that the employees had not been consulted before the instructions were issued, contrary to the well-established practice. Therein the Court observed as under :

> *"I have already explained my reasons for holding that, if no question of national security arose, the decision-making process in this case would have been unfair. The respondent's case is that she deliberately made the decision without prior consultation because prior consultation "would involve a real risk that it would occasion the very kind of disruption [at GCHQ] which was a threat to national security and which it was intended to avoid." I have quoted from paragraph 27(i) of the respondent's printed case. Mr. Blom-Cooper conceded that a reasonable minister could reasonably have taken that view, but he argued strongly that the respondent had failed to show that that was in fact the reason for her decision. He supported his argument by saying,*

> *as I think was conceded by Mr. Alexander, that the reason given in paragraph 27(i) had not been mentioned to Glidewell J. and that it had only emerged before the Court of Appeal. He described it as an "afterthought" and invited the House to hold that it had not been shown to have been the true reason.*
>
> *The question is one of evidence. The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on grounds of national security. Authority for both these points is found in The Zamora [1916] 2 A.C. 77. The former point is dealt with in the well known passage from the advice of the Judicial Committee delivered by Lord Parker of Waddington, at p. 107:*
>
> *"Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public."*"

60. Taking note of the decision in ***The Zamora*** (supra), particularly, the oft-cited observation in that case to the effect that "those who are responsible for the national security must be sole judges of what the national security requires", it was further observed as under:

> *"These words were no abdication of the judicial function, but were an indication of the evidence required by the court. In fact the evidence adduced by the Crown was not as not sufficient, and the court ruled that the Crown had no right to requisition. The Crown's claim was rejected "because the judge had before him no satisfactory evidence that such a right was exercisable" (p. 108). The Prize Court, therefore, treated the question as one of fact for its determination and indicated the evidence needed to establish the fact. The true significance of Lord Parker's dictum is simply that the court is in no position to substitute its opinion for the opinion of those responsible for national security. But the case is a fine illustration of the court's duty to ensure that the essential facts to which the opinion or judgment of those responsible relates are proved to the satisfaction of the court."*

61. In ***Secretary of State for the Home Department vs. Rehman*** (2001) 3 WLR 877, it was observed as under:-

> *"17. ……If an act is capable of creating indirectly a real possibility of harm to national security it is in principle wrong to say that the state must wait until action is taken which has a direct effect against the United Kingdom.*
>
> *18 National security and defence of the realm may cover the same ground though I tend to think that the latter is capable of a wider meaning. But if they are the same then I would accept that defence of the realm may justify action to prevent indirect and subsequent threats to the safety of the realm.*
>
> *19 The United Kingdom is not obliged to harbour a terrorist who is currently taking action against some other state (or even in relation to a contested area of land claimed by another state) if that other state could realistically be seen by the Secretary of State as likely to take action against the United Kingdom and its citizens.*
>
> *20 I therefore agree with the Court of Appeal that the interests of national security are not to be confined in the way which the Commission accepted.*
>
> *xxx xxx xxx*
>
> ***28……..Even democracies are entitled to protect themselves, and the executive is the best judge of the need for international co-operation to combat terrorism and counter-terrorist strategies. This broader context is the backcloth of the Secretary of State's statutory power of deportation in the interests of national security.***
>
> *xxx xxx xxx*
>
> *31.....It is, however, self-evidently right that national courts must give great weight to the views of the executive on matters of national security….."*

62. Thus, the Courts in the U.K. have been unequivocal in giving precedence to the national security over reasonable due process, for reasons enunciated in the above judgments.

63. In the recent case of ***R. Begum vs. SIAC***, (2021) 2 WLR 556, while taking note of the judgment in ***Secretary of State for Home Department*** (supra), the Court cited with approval the following observation of the Court in ***Secretary of State for Home Department*** (supra):

> *"It is not only that the executive has access to special information and expertise in these matters. It is also that such decisions, with serious potential results for the community, require a legitimacy which can be conferred only by entrusting them to persons responsible to the community through the democratic process. If the people are to accept the consequences of such decisions, they must be made by persons whom the people have elected and whom they can remove."*

64. It was noticed that the above has been reiterated subsequently in ***A v. Secretary of State for the Home Department***, (2005) 2 AC 68 and ***R (Lord Carlile of Berriew) vs. Secretary of State for the Home Department***, (2015) AC 945.

**Legal Position as enunciated by Courts in United States**

65. It was held by the Supreme Court of United States in ***Alexander M. HAIG, Jr., Secretary of State of the United States v. Philip AGEE***, 1981 SCC OnLine US SC 166 as under:-

> *"55. It is "obvious and unarguable" that no governmental interest is more compelling than the security of the Nation. Aptheker v. Secretary of State, 378 U.S., at 509, 84 S.Ct., at 1665; accord Cole v. Young, 351 U.S. 536, 546, 76 S.Ct. 861, 868, 100 L.Ed. 1396 (1956); see Zemel, supra, at 13-17, 85 S.Ct., at 1279-1281. Protection of the foreign policy of the United States is a governmental interest of great importance, since foreign policy and national security considerations cannot neatly be compartmentalized.*
>
> *56. Measures to protect the secrecy of our Government's foreign intelligence operations plainly serve these interests. Thus, in Snepp v. United States, 444 U.S. 507, 509, n. 3, 100 S.Ct. 763, 765, n. 3, 62 L.Ed.2d 704 (1980), we held that "[t]he Government has a compelling*

> *interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." See also id., at 511-513, 100 S.Ct., at 766-767. The Court in United States v. Curtiss-Wright Export Corp. properly emphasized:"*

66. In ***Department of Navy v. Thomas E. EGAN***, 1988 SCC OnLine US SC 22, the respondent had lost his job on account of denial of a required security clearance. In that context, it was observed by the Supreme Court as under:

> *"22. It should be obvious that no one has a "right" to a security clearance. The grant of a clearance requires an affirmative act of discretion on the part of the granting official. The general standard is that a clearance may be granted only when "clearly consistent with the interests of the national security." See, e.g., Exec. Order No. 10450, §§ 2 and 7, 3 CFR 936, 938 (1949-1953 Comp.); 10 CFR § 710.10(a) (1987) (Department of Energy); 32 CFR § 156.3(a) (1987) (Department of Defense). A clearance does not equate with passing judgment upon an individual's character. Instead, it is only an attempt to predict his possible future behavior and to assess whether, under compulsion of circumstances or for other reasons, he might compromise sensitive information. It may be based, to be sure, upon past or present conduct, but it also may be based upon concerns completely unrelated to conduct, such as having close relatives residing in a country hostile to the United States. "[T]o be denied [clearance] on unspecified grounds in no way implies disloyalty or any other repugnant characteristic." Molerio v. FBI, 242 U.S.App.D.C. 137, 146, 749 F.2d 815, 824 (1984). The attempt to define not only the individual's future actions, but those of outside and unknown influences renders the "grant or denial of security clearances . . . an inexact science at best." Adams v. Laird, 136 U.S.App.D.C. 388, 397, 420 F.2d 230, 239 (1969), cert. denied, 397 U.S. 1039, 90 S.Ct. 1360, 25 L.Ed.2d 650 (1970)."*

67. Thus, the view taken by the US Supreme Court is that there should be minimal judicial interference in respect of administrative actions/denial of security clearance on considerations of national security. In ***Department of Navy*** (supra), it was noticed that the security clearance may be granted only when it is "clearly consistent with the interest of national security". It was

further noticed that the security clearance does not equate with parting judgment upon an individual's character, instead, it is only an attempt to assess whether, under compulsion of circumstances or for other reasons, the individual might compromise sensitive information. The US Supreme Court went on to observe that predictive judgments of this kind are best made by those with the necessary expertise in protecting classified information.

68. Thus, the proposition that procedural due process and natural justice may be dispensed with where National security is involved finds support in both domestic and comparative constitutional jurisprudence.

**JUSTICIABILITY OF NATIONAL SECURITY CONSIDERATIONS**

69. In case of ***Ex Armyman's*** (supra), the Supreme Court cited with approval the observations of the Privy Council in ***The Zamora*** (supra), wherein the oft-quoted comment was made to the effect that those who are responsible for national security must be the sole judges of what national security requires.

70. It is notable, however, that on the facts of ***The Zamora*** (supra), the Court found that the impugned action therein could not be justified for the reasons that the concerned order in that case (whereby the requisition of cargo was resorted to) did not specifically say that the same was necessitated for national security purposes.

71. In ***Ex Armyman's*** (supra), the Supreme Court referred not only to ***The Zamora*** (supra), but also to the observations of the U.K. House of Lords in ***Crompton Alfred Amusement Machines v. Customs and Excise Commissioners***, (1973) 3 WLR 268 as under:-

> *"… In a case where the considerations for and against disclosure*

*appear to be fairly evenly balanced the courts should, I think, uphold a claim to privilege on the grounds of public interest and trust to the head of the department concerned to do whatever he can to mitigate the ill effects of non-disclosure."*

72. Finally, it was observed by the Supreme Court as under:-

*"16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman [(2003) 1 AC 153 : (2001) 3 WLR 877 : (2002) 1 All ER 122 (HL)] : (AC p. 192C)*

> *"… [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."*

*17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."*

73. Thus, in ***Ex Armyman's*** (supra), the Supreme Court categorically held that in order for the Court to satisfy itself that the concerned action has been taken on account of national security considerations, it is open to the Court to call for the relevant files so as to ascertain whether the interest of national security is indeed involved. However, once national security considerations are found to be the reasons for the concerned action, the issue as to whether something is or is not in the interest of national security is not a matter for judicial review. In ***Ex Armyman's*** (supra), the Supreme Court

specifically referred, with approval, to the following observations of Lord Hoffmann in ***Secretary of State for Home Department*** (supra) -

> *"50 I shall deal first with the separation of powers. Section 15(3) of the 1971 Act specifies "the interests of national security" as a ground on which the Home Secretary may consider a deportation conducive to the public good. What is meant by "national security" is a question of construction and therefore a question of law within the jurisdiction of the Commission, subject to appeal. But there is no difficulty about what "national security" means. It is the security of the United Kingdom and its people. On the other hand, the question of whether something is "in the interests" of national security is not a question of law. It is a matter of judgment and policy. Under the constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive."*

74. In ***Regina*** (supra), it was held that where the concerned action has been taken for national security considerations, the Court would be bound to accept the same. The Court made a telling observation to the effect that where national security is involved, our cherished freedoms may have to take second place; even natural justice itself may suffer a setback. The Court cited with approval the observation in ***Rex v. Halliday,*** [1917] AC 260 to the effect that "*the danger of espionage and of damage by secret agents … had to be guarded against*". The Court also observed that even in the times of peace, spy, subverts, saboteurs may be mingling amongst us and endangering lives of the citizens.

75. In ***Council of Civil Service Unions*** (supra), the House of Lords observed that where a substantive decision has been taken for national security purposes, the Court will not review the decision making process. It was observed as under:

> *"……Once the factual basis is established by evidence so that the court is satisfied that the interest of national security is a relevant factor to be considered in the determination of the case, the court will*

*accept the opinion of the Crown or its responsible officer as to what is required to meet it, unless it is possible to show that the opinion was one which no reasonable minister advising the Crown could in the circumstances reasonably have held. There is no abdication of the judicial function, but there is a common sense limitation recognised by the judges as to what is justiciable: and the limitation is entirely consistent with the general development of the modern case law of judicial review."*

76. It was also held as under:

*"The reason why the Minister for the Civil Service decided on 22 December 1983 to withdraw this benefit was in the interests of national security. National security is the responsibility of the executive government; what action is needed to protect its interests is, as the cases cited by my learned friend, Lord Roskill, establish and common sense itself dictates, a matter upon which those upon whom the responsibility rests, and not the courts of justice, **must have the last word**. It is par excellence a **non-justiciable** question. The judicial process is totally inept to deal with the sort of problems which it involves.*

*The executive government likewise decided, and this would appear to be a collective decision of cabinet ministers involved, that the interests of national security required that no notice should be given of the decision before administrative action had been taken to give effect to it. The reason for this was the risk that advance notice to the national unions of the executive government's intention would attract the very disruptive action prejudicial to the national security the recurrence of which the decision barring membership of national trade unions to civil servants employed at GCHQ was designed to prevent.*

*There was ample evidence to which reference is made by others of your Lordships that this was indeed a real risk; so the crucial point of law in this case is whether procedural propriety must give way to national security when there is conflict between (1) on the one hand, the prima facie rule of "procedural propriety" in public law, applicable to a case of legitimate expectations that a benefit ought not to be withdrawn until the reason for its proposed withdrawal has been communicated to the person who has theretofore enjoyed that benefit and that person has been given an opportunity to comment on the reason, and (2) on the other hand, action that is needed to be taken in the interests of national security, for which the executive government bears the responsibility and alone has access to sources of information that qualify it to judge what the necessary action is. To that there can, in my opinion, be only one sensible answer. That answer is "Yes.""*

77. In ***Secretary of State for the Home Department*** (supra), it was observed as under:-

> *"16.……It seems to me that, in contemporary world conditions, action against a foreign state may be capable indirectly of affecting the security of the United Kingdom. The means open to terrorists both in attacking another state and attacking international or global activity by the community of nations, whatever the objectives of the terrorist, may well be capable of reflecting on the safety and well-being of the United Kingdom or its citizens. The sophistication of means available, the speed of movement of persons and goods, the speed of modern communication, are all factors which may have to be taken into account in deciding whether there is a real possibility that the national security of the United Kingdom may immediately or subsequently be put at risk by the actions of others. To require the matters in question to be capable of resulting "directly" in a threat to national security limits too tightly the discretion of the executive in deciding how the interests of the state, including not merely military defence but democracy, the legal and constitutional systems of the state need to be protected. I accept that there must be a real possibility of an adverse affect on the United Kingdom for what is done by the individual under inquiry but I do not accept that it has to be direct or immediate. Whether there is such a real possibility is a matter which has to be weighed up by the Secretary of State and balanced against the possible injustice to that individual if a deportation order is made.*
>
> *xxx xxx xxx*
>
> *26. In conclusion even though the Commission has powers of review both of fact and of the exercise of the discretion, the Commission must give due weight to the assessment and conclusions of the Secretary of State in the light at any particular time of his responsibilities, or of Government policy and the means at his disposal of being informed of and understanding the problems involved. He is undoubtedly in the best position to judge what national security requires even if his decision is open to review. The assessment of what is needed in the light of changing circumstances is primarily for him. On an appeal the Court of Appeal and your Lordships' House no doubt will give due weight to the conclusions of the Commission, constituted as it is of distinguished and experienced members, and knowing as it did, and as usually the court will not know, of the contents of the "closed" evidence and hearing. If any of the reasoning of the Commission shows errors in its approach to the principles to be followed, then the courts can intervene. In the present case I consider that the Court of Appeal was right in its decision*

> *on both of the points which arose and in its decision to remit the matters to the Commission for redetermination in accordance with the principles which the Court of Appeal and now your Lordships have laid down. I would accordingly dismiss the appeals."*

78. Thus, the Court recognized that the concerned specialized agencies are in the best position to assess the demands of national security and the Court would not second guess the same unless the facts are such that no reasonable person could have ever reached the conclusion that the national security considerations were involved. However, once national security considerations are found to be in play, then, the Court would not second guess the rationale/sufficiency of the action taken.

79. In ***R. Begum*** (supra), the Court cited with approval observations of the Lord Hoffmann in ***Secretary of State for the Home Department*** (supra) wherein it was observed that only the executive has access to special information and expertise in these matters. It was observed as under:

> *"62. Finally, Lord Hoffmann explained at para 62 that a further reason for SIAC to respect the assessment of the Secretary of State was the importance of democratic accountability for decisions on matters of national security :*
>
> *"It is not only that the executive has access to special information and expertise in these matters. It is also that such decisions, with serious potential results for the community, require a legitimacy which can be conferred only by entrusting them to persons responsible to the community through the democratic process. If the people are to accept the consequences of such decisions, they must be made by persons whom the people have elected and whom they can remove.""*

80. In ***Department of Navy*** (supra), the Supreme Court of United States observed that security clearance determinations should err, if they must, on the side of denials. The same would especially apply to security clearance granted for the purpose of sensitive installations used by the large numbers of citizens and where any infraction of security can result a catastrophic

consequence. It was observed in ***Alexander M. HAIG*** (supra) that no Government interest is more compelling than the security of the nation.

**THE MADHYAMAM CASE**

81. The above principles fell for an extensive examination by the Supreme Court in ***Madhyamam*** (supra). The controversy arose in the backdrop of an order dated 31.01.2022, whereby the Ministry of Information and Broadcasting revoked the permission for up-linking and down-linking, granted to a current affairs media channel called "Media One" due to the denial of security clearance.

82. It is notable that in the said case, security clearance had originally been granted on 07.02.2011. Thereafter, additional permissions were granted to uplink and downlink certain other channels as well (both news and non-news channels) i.e. Media One Life and Media One Global. However, the denial of security clearance subsequently led to the issuance of a show cause notice by the Ministry of Information and Broadcasting on 12.02.2016 proposing to revoke the permission granted in respect of Media One Life and Media One.

83. On 11.09.2019, the Ministry of Information and Broadcasting cancelled the up-linking and down-linking permission granted in respect of Media One Life, although no action was taken with respect to Media One.

84. On the facts of the case, the Supreme Court noted (in Para 86 of the judgment) that the security clearance had initially been granted despite adverse observations of the Intelligence Bureau whereby the concerned organisation was sought to be linked to one Jamaat-e-Islami.

85. The objection was that the request carried out by the concerned entity

in certain publication was of an adverse nature and few executive of the entity had association with the aforesaid organisation (Jamaat-e-Islami).

86. The above facts have been noted to highlight that in ***Madhyamam*** (supra), the Supreme Court found on facts that no national security considerations were involved so as to warrant the revocation of security clearance. It was observed by the Supreme Court has under:

> *"98 Security clearance was denied to MBL because of its alleged link with JEI-H, and its alleged anti-establishment stance. To conclude that MBL is linked to JEI-H, IB has relied on the 'tenor' of the articles published by dailies of MBL, and the shareholding pattern of MBL. To conclude that JEI-H has an anti-establishment stance, IB has solely relied upon the programmes that were broadcast by MediaOne. Some of the views that were highlighted in the IB report to conclude that MBL has an anti-establishment stand are that (i) it portrays security forces and the judiciary in a bad light; (ii) it highlighted the discrimination faced by minorities in the country and contrasted it with the State's alleged soft attitude towards the Hindus who were involved in the destruction of Babri Masjid; and (iii) its comments on UAPA, Armed Forces (Special Power) Act, developmental projects of the Government, encounter killings, Citizenship (Amendment) Act, and CAA/NPR/NRC.*
>
> *99. Significantly, with respect to the list of shareholders who are alleged sympathizers of JEI-H, the file does not contain any evidence on the alleged link between the shareholders and JEI-H. The report of IB is purely an inference drawn from information that is already in the public domain. There is nothing 'secretive' about this information to attract the ground of confidentiality. Additionally, it cannot be argued that the purpose of national security will be served by non-disclosure merely by alleging that MBL is involved with JEI-H which is an organisation with alleged terrorist links. While we have held above that it would be impractical and unwise for the courts to define the phrase national security, we also hold that national security claims cannot be made out of thin air. There must be material backing such an inference. The material on the file and the Inference drawn from such material have no nexus. The non-disclosure of this information would not be in the interest of any facet of public interest, much less national security. On a perusal of the material, no reasonable person would arrive at the conclusion that the non-disclosure of the relevant material would be in the interest of national security and confidentiality.*

> *167. The critical views of the Channel, Media-One on policies of the government cannot be termed, 'anti-establishment'. The use of such a terminology in itself, represents an expectation that the press must support the establishment. The action of the MIB by denying a security clearance to a media channel on the basis of the views which the channel is constitutionally entitled to hold produces a chilling effect on free speech, and in particular on press freedom. Criticism of governmental policy can by no stretch of imagination be brought withing the fold of any of the grounds stipulated in Article 19(2)."*

87. As such, the Court found that national security considerations were not involved in that case. It was held that the critical views of the concerned media channel, on policies of the Government, could not be termed "anti-establishment", much less could the same be construed to be inimical to national security. Thus, the factual conspectus of ***Madhyamam*** (supra) was quite different from the present case. The present case involves considerations pertaining to security of the realm and cannot be equated with a situation involving alleged deleterious effect of expression of opinion/s through media channels. In the course of the judgment in ***Madhyamam*** (supra), the Supreme Court had occasion to dwell at length on how a court should approach a situation where security clearance is denied/revoked on account of national security considerations without following the principles of natural justice. It was emphasized that the standard of proportionality must be used to assess whether abrogation of the principles of natural justice, are justified or not. It was held as under –

> *"76. Having held that the concerns of national security do not permit an absolute abrogation of the principles of natural justice, we are now required to assess if the restriction on procedural guarantees is reasonable on an application of the proportionality standard. The proportionality standard as laid down by this Court in Modern Dental (supra) is as follows:*
>
> > *(i) The measure restricting a right must have a legitimate goal (legitimate goal stage).*

> *(ii) The measure must be a suitable means for furthering this goal (suitability or rational connection stage).*
> *(iii) The measure must be least restrictive and equally effective (necessity stage).*
>
> *(iv) The measure must not have a disproportionate impact on the right holder (balancing stage).”*

88. In ***Madhyamam*** (supra), it was found that the very first requirement was not satisfied, inasmuch as it was specifically found, based on a perusal of the material on file, that invocation of national security considerations was unjustified. A finding was specifically rendered in paragraph 99 that “on a perusal of the material, no reasonable person would arrive at the conclusion that the non-disclosure of the relevant material would be in the interest of national security and confidentiality”.

89. Importantly, in ***Madhyamam*** (supra), it was recognized by the Supreme Court that confidentiality of evidence and national security are legitimate goals recognized by the Constitution for the purpose of limiting procedural rights. It was held as under:

> *“80. The Constitution prescribes national security as one of the grounds which can be used to reasonably restrict rights expressly in the context of Article 19. Further, other provisions of the Constitution prescribe a departure from principles during emergency situations that impact national security. Similarly, informational privacy and confidentiality are now values that have been read into the Constitution, particularly in view of the decision of a nine Judge Bench in Justice KS Puttaswamy (9J) (supra) and the enactment of the Right to Information Act 2005. Thus, confidentiality and national security are legitimate goals recognised by the Constitution for the purpose of limiting procedural rights.”*

90. It was also observed as under:

> *“74. The following principles emerge from the above judgements:*
>
> *(i) The party affected by the decision must establish that the decision was reached by a process that was unfair without complying with the*

*principles of natural justice;*

*(ii) The State can claim that the principles of natural justice could not be followed because issues concerning national security were involved:*

*(iii) The Courts have to assess if the departure was justified. For this purpose, the State must satisfy the Court that firstly, national security is involved; and secondly, whether on the facts of the case, the requirements of national security outweigh the duty of fairness. At this stage, the court must make its decision based on the component of natural justice that is sought to be abrogated; and*

*(iv) While satisfying itself of the national security claim, the Courts must give due weightage to the assessment and the conclusion of the State. The Courts cannot disagree on the broad actions that invoke national security concerns - that is, a question of principle such as whether preparation of terrorist activities by a citizen in a foreign country amounts to a threat of national security. However, the courts must review the assessment of the State to the extent of determining whether it has proved through cogent material that the actions of the aggrieved person fall within the principles established above."*

91. In ***Madhyamam*** (supra), the Supreme Court specifically took note of the judgment in ***Ex. Armyman's*** (supra), where it was held by the Supreme Court that the principles of natural justice may be excluded when on the facts of the case, national security concerns outweigh the duty of fairness. It was specifically noted by the Supreme Court in ***Madhyamam*** (supra), that national security is one of the few grounds on which "the right to reasonable procedural guarantee" may be restricted. It was observed as under:

*"75. The contention of the respondent that the judgment of this Court in Ex-Armymen's Protection Services (supra) held that the principles of natural justice shall be excluded when concerns of national security are involved is erroneous. The principle that was expounded in that case was that the principles of natural justice may be excluded when on the facts of the case, national security concerns outweigh the duty of fairness. Thus, national security is one of the few grounds on which the right to a reasonable procedural guarantee may be restricted. The mere involvement of issues concerning national security would not preclude the state's duty to act fairly. If the State discards its duty to act fairly, then it must be justified before the court on the facts of the case. Firstly,*

> *the State must satisfy the Court that national security concerns are involved. Secondly, the State must satisfy the court that an abrogation of the principle(s) of natural justice is justified. These two standards that have emerged from the jurisprudence abroad resemble the proportionality standard. The first test resembles the legitimate aim prong, and the second test of justification resembles the necessity and the balancing prongs."*

92. It is, therefore, evident that in ***Madhyamam*** (supra), the Supreme Court has recognized in unmistakable terms that the principles of natural justice may be excluded when national security concerns outweigh the duty of fairness.

93. Importantly, in ***Madhyamam*** (supra), the Supreme Court also recognized that for the purpose of assessing whether national security considerations are involved, the Court applies the "reasonable prudent person standard", which is one of the lowest standards to test reasonableness of the action. The Supreme Court expressly recognised that the State is best placed to decide how the interest of national security would be served. The Court would not "second guess" the assessment of the State "that the purpose identified would violate India's national security". It was held that due deference would be given to the State to form its opinion; the same is subject to review on the limited ground of whether there is nexus between the material and the opinion/conclusion. **It was specifically observed that it is the executive wing and not the judicial wing that has the knowledge of India's geo-political relationships to assess if an action is in the interest of India's national security**. The relevant observations of the Supreme Court are as under:

> *"…..The reasonable prudent person standard which is one of the lowest standards to test the reasonableness of an action is used to test national security claims by courts across jurisdictions because of their*

> *deferential perception towards such claims. This is because courts recognise that the State is best placed to decide if the interest of national security would be served. The court allows due deference to the State to form its opinion but reviews the opinion on limited grounds of whether there is nexus between the material and the conclusion. The Court cannot second-guess the judgment of the State that the purpose identified would violate India's national security. It is the executive wing and not the judicial wing that has the knowledge of India's geo-political relationships to assess if an action is in the interest of India's national security."*

94. At the same time, the Supreme Court clarified that judicial review would not be excluded on a mere mention of the phrase "national security". The State cannot be allowed to use national security as a tool to deny citizens remedies that are provided under law.

95. The Supreme Court cited the judgment in ***Manoharlal Sharma vs. Union of India***, 2021 SCC OnLine SC 985, where it was held by the Three-judge Bench that although the extent of judicial review in matters concerning national security is limited, it does not mean that the State gets a "free pass" every time the argument of national security is made.

96. In ***Madhyamam*** (supra), the Supreme Court has also considered in considerable detail, the procedure to be adopted by the Court for assessing/ adjudging an action taken on the basis of national security considerations. In particular, whether and under what circumstances, is it permissible for a Court to accept the materials in sealed cover. It was noticed by the Supreme Court that under normal circumstances, accepting the documents in a sealed cover would offend the concept of "open justice". It was observed by the Supreme Court that a Court should endeavour to adopt a least restrictive method for the purpose of deciding claims involving invocation of confidentiality on the ground of national security.

97. While discussing the least restrictive means that could be resorted to, the Court referred in considerable detail, to the procedure adopted for the purpose of public interest immunity claims. However, it was noticed by the Court that in the context of both "sealed cover procedure" and "public interest immunity claims", the documents that are sought to be withheld from disclosure, are not revealed to the counsel for the applicant. The proceedings in effect are conducted *ex-parte* where the counsel of the party claiming disclosure is precluded from assessing a part of the record in the proceedings. It was noticed that the crucial difference between sealed cover procedure and public interest immunity claims is that in the former, the Court relies on the material that is disclosed in a sealed cover, in the course of proceedings, as opposed to the latter, where the documents are completely removed from the proceedings, and the parties as well as the adjudicator, cannot rely thereon. It was observed as under:

> *"146. In both the sealed cover procedure and public interest immunity claims, the documents that are sought to be withheld from disclosure are not revealed to the counsel for the applicant. The proceedings, in effect, are conducted ex-parte where the counsel for the party claiming disclosure is precluded from accessing a part of the record in the proceedings. However, one crucial difference between the sealed cover procedure and public interest immunity claims is that in the former, the court relies on the material that is disclosed in a sealed cover in the course of the proceedings, as opposed to the latter where the documents are completely removed from the proceedings and both the parties and the adjudicator cannot rely on such material. Sealed cover procedures violate both principles of natural justice and open justice……."*

98. The Court reached the conclusion that the procedure adopted in "public interest immunity proceedings", is a less restrictive means to deal with non-disclosure on the grounds of confidentiality in public interest. Finally, the Court considered whether the procedure of submission of

confidential documents in "sealed cover" can be used at all and if so, under what circumstances. It was finally held as under:

> *"158.....While it would be beyond the scope of this judgment to lay down the possible situations when the sealed cover procedure can be used, it is sufficient to state that if the purpose could be realised effectively by public interest immunity proceedings or any other less restrictive means, then the sealed cover procedure should not be adopted. The court should undertake an analysis of the possible procedural modalities that could be used to realise the purpose, and the means that are less restrictive of the procedural guarantees must be adopted."*

99. It is also noticed that in ***Madhyamam*** (supra), the Court while citing with approval the judgment of the House of Lords in ***Conway v. Rimmer***, (1968) AC 910 has observed as under –

> *"123 The House of Lords altered its approach in Conway v. Rimmer. Lord Reid observed that that impact of non-disclosure must not be viewed through the narrow lens of private interest and it is public interest in the administration of justice that is injured due to non-disclosure of documents. The House of Lords established three principles of seminal importance. Firstly, the power to decide if evidence has to be withheld from the court resides with the court and not the executive. Secondly, the court while exercising this power must balance the potential harm to the public interest due to disclosure with the court's inability to administer justice. The Court while determining the later harm must assess the effect of non-disclosure on ascertaining the 'true facts' and on the wider principle of public confidence in the court system. Thirdly, the court is entitled to inspect, in private, the material on which immunity is claimed. On scrutinising the material, the court has to determine if non-disclosure is necessary due to public interest, and not merely advantageous to the functioning of public service. Lord Hudson held that the Court in its scrutiny must discard the generalities of classes and must weigh the injuries to the public 'of a denial of justice on the one side and, on the other, a revelation of governmental documents which were never intended to be made public and which might be inhibited by an unlikely possibility of disclosure.' The conflict of the claims of public interest must be determined based on the importance of the documents sought to be withheld in the case before the court (a question of outcome), and whether the non-disclosure would result in a 'complete' or 'partial' denial of justice (a question of process and outcome)."*

100. In ***Conway v. Rimmer*** (supra), it was specifically observed that the Courts ought not to have any difficulty in appreciating the necessity of maintaining a cloak of secrecy over documents, the disclosure of which would imperil the safety of the State. It was also observed as under :-

> *"It is universally recognised that here there are two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done. There are many cases where the nature of the injury which would or might be done to the nation or the public service is of so grave a character that no other interest, public or private, can be allowed to prevail over it. With regard to such cases it would be proper to say, as Lord Simon did, that to order production of the document in question would put the interest of the state in jeopardy. But there are many other cases where the possible injury to the public service is much less and there one would think that it would be proper to balance the public interests involved. I do not believe that Lord Simon really meant that the smallest probability of injury to the public service must always outweigh the gravest frustration of the administration of justice."*

101. The Court also proceeded to make a distinction between routine communications by Government Department *vis-a-vis* documents impinging on the security of the State / national security. It was observed as under:-

> *"So far as concerns particular documents whose disclosure is said to be injurious to the public interest the problem is less acute. If the Crown on the ground of injury to the public objects to the production of the plans of a submarine, as in Duncan's case, it is obvious that the court would accept the matter without further scrutiny. In a less obvious case the court might require more detailed elaboration by the Crown to show that what on the face of it seems harmless would in fact be harmful."*

102. Further, it was observed as under:-

> *"No doubt there are many cases in which documents by their very nature fall in a class which require protection such as, only by way of example, Cabinet papers, Foreign Office dispatches, the security of the state, high level interdepartmental minutes and correspondence and documents pertaining to the general administration of the naval, military and air*

> *force services. Nearly always such documents would be the subject of privilege by reason of their contents but by their "class" in any event they qualify for privilege."*

103. As regards the right of the Court to examine the documents in respect of which confidentiality is claimed, it was observed in ***Conway v. Rimmer*** (supra) as under:-

> *"The power of the court must also include a power to examine documents privately, a power, I think, which in practice should be sparingly exercised but one which could operate as a safeguard for the executive in cases where a court is inclined to make an order for production, though an objection is being pressed."*

104. A Division Bench of this Court in ***Visuvanathan Rudrakumaran v. Union of India and Another***, 2024 SCC OnLine Del 7512, while considering the implications of the judgment in ***Madhyamam*** (supra), has observed as under –

> *"35.....The issue of judicial review in matters concerning national security, has been recently considered by the Supreme Court in Madhyamam Broadcasting Ltd. v. Union of India, 2023 SCC OnLine SC 366. In the said decision, the Supreme Court clearly holds that national security cannot be raised as a ground to bar judicial review in each and every case, but the same would be a ground to limit the extent of judicial review if the Court is convinced from the material furnished by the Government, that the matter at hand involves genunine national security concerns. The relevant observations of the Supreme Court are reproduced hereinunder:*
>
> > ***" The issue is not whether the inference that national security concerns are involved is judicially reviewable. It is rather on the standard of proof that is required to be discharged by the State to prove that national security concerns are involved.*** *It is necessary that we understand the meaning and implications of the term national security before embarking on an analysis of the issue. This Court has held that it is not possible to define national security in strict terms. National security has numerous facets, a few of which are recognised under Article 19(2) of the Constitution. In Ex-Armymen's Protection Services (supra), a two-Judge Bench of this Court observed that the phrase national security would include factors like 'socio-political stability, territorial integrity,*

*economic stability and strength, ecological balance cultural cohesiveness and external peace. Justice Patanjali Sastri writing for the majority in Romesh Thappar v. State of Madras demarcated the fields of 'public order' and 'security of state' as they find place in Article 19 of the Constitution. This Court held that the expression 'security of the state' was defined to include a 'distinct category of those offences against public order which aim at undermining the security of the State or overthrowing it'. In Ram Manohar Lohia v. State of Bihar, Justice M Hidayatullah (as the learned Chief Justice then was) distinguished the expressions 'security of State', 'law and order', and 'public disorder'. He observed that disorders affecting the security of State are more aggravated than disorders that affect public order and law and order:*

> *55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.*

***94.*** *Thus, the expression national security does not have a fixed meaning. While courts have attempted to conceptually distinguish national security from public order, it is impossible (and perhaps unwise) to lay down a text-book definition of the expression which can help the courts decide if the factual situation is covered within the meaning of the phrase. The phrase derives its meaning from the context. It is not sufficient for the State to identify its purpose in broad conceptual terms such as national security and public order. Rather, it is imperative for the State to prove through the submission of cogent material that non-disclosure is in the interest of national security. It is the Court's duty to assess if there is sufficient material for forming such an opinion. A claim cannot be made out of thin air without material backing for such a conclusion. The Court must determine if the State makes the claim in a bona fide manner. The Court must assess the validity of the*

*claim of purpose by determining (i) whether there is material to conclude that the nondisclosure of the information is in the interest of national security; and (ii) whether a reasonable prudent person would arrive at the same conclusion based on the material.* ***The reasonable prudent person standard which is one of the lowest standards to test the reasonableness of an action is used to test national security claims by courts across jurisdictions because of their deferential perception towards such claims. This is because courts recognise that the State is best placed to decide if the interest of national security would be served. The court allows due deference to the State to form its opinion but reviews the opinion on limited grounds of whether there is nexus between the material and the conclusion. The Court cannot second-guess the judgment of the State that the purpose identified would violate India's national security. It is the executive wing and not the judicial wing that has the knowledge of India's geo-political relationships to assess if an action is in the interest of India's national security****."*

*36. In Madhyamam (supra), the earlier decision of the Supreme Court in Manohar Lal Sharma v. Union of India, 2021 SCC OnLine SC 985, was considered, and the parameters of judicial review in matters concerning national security were laid down as extracted above."*

**APPLICABILITY OF THE AFORESAID PRINCIPLES IN THE PRESENT CASE**

105. In the present case, at the very outset, during the proceedings held on 22.05.2025, this Court directed the respondents to produce the relevant inputs/information on the basis of which the security clearance of the petitioners was sought to be revoked, without complying with the principles of natural justice. This was in consonance with the observations of the Supreme Court in ***Ex. Armyman's*** (supra), in which it was held that it is incumbent upon the Court to call for the relevant records and scrutinize the same to satisfy itself that issues of national security are involved. Even in terms of ***Madhyamam*** (supra), the Court is entitled to peruse the record to ascertain existence of legitimate national security considerations. It has also

been observed in ***Madhyamam*** (supra)[9] that "it does not mean that the State gets a free pass every time an argument of national security is made". This Court is acutely conscious that the State must not be allowed to invoke national security as a ruse to deny procedural due process.

106. On perusal of the relevant inputs/information, it indeed transpires that there are compelling national security considerations involved, which impelled the respondents to take impugned action. While it would not be inappropriate for this Court to make a verbatim reference to the relevant information/inputs, suffice it to say, that there is a necessity to eliminate the possibility of espionage and/or dual use of logistics capabilities which would be highly detrimental to the security of the country, especially in the event of an external conflict.

107. Suffice it also to say, that there are impelling geo-political considerations, impinging upon the safety of the country, which are also involved. ***Madhyamam*** (supra) specifically recognizes that "it is the executive wing and not the judicial wing that has the knowledge of India's geopolitical relationships to assess if an action is in the interest of India's national security" [Paragraph 84 of the ***Madhyamam*** (supra)].

108. As per settled law (as noticed hereinabove), once national security considerations are found to exist, on the basis of which the security clearance has been cancelled/revoked, it is not for the Court to "second guess" the same.

109. It is also evident that in the given factual conspectus, even applying the principle of "proportionality" and/or the least restrictive mean/s, there was really no occasion to make the impugned action contingent upon

[9] Relying upon ***Manohar Lal Sharma v. Union of India***, 2021 SCC OnLine SC 985

adherence to the principles of natural justice, or any procedural exercise which would detract from the necessity to take swift action. There is considerable body of judicial dicta to the effect that the State is well within its rights to take pre-emptive measures to protect and preserved national security.

110. No doubt, the principles of natural justice are sacrosanct; however, it is a compelling constitutional truth that security of the realm is the pre-condition for enjoyment of all other rights. The State/respondents are indeed justified in taking prompt and definitive action so as to completely obviate the possibility of country's civil aviation and national security being compromised. Ground handling services at airports offer deep access to airside operations, aircrafts, cargo, passenger information system and security zones. Such unbridled access to vital installations and infrastructure naturally elevates the need for strict security vetting for operators, and their foreign affiliations. This is particularly true in the wake of contemporary challenges faced by the country in the security domain, and the escalations/incidents witnessed in the recent past, with geopolitical factors at play. As has been observed in ***Conway v. Rimmer*** (supra) :-

> *"In theory any general legal definition of the balance between individual justice in one scale and the safety and well-being of the state in the other scale, should be unaffected by the dangerous times in which it is uttered. But in practice the flame of individual right and justice must burn more palely when it is ringed by the more dramatic light of bombed buildings. And the human mind cannot but be affected subconsciously, even in generality of definition, by such a contrast since it is certainly a matter which ought to influence the particular decision in the case."*

111. The action taken is consistent with the judicially evolved principles, recognized across jurisdictions, which give primacy to legitimate national

security considerations, even when weighed against the procedural due process.

112. This Court also has no difficulty in appreciating the necessity of maintaining secrecy in respect of document/s on the basis of which the security clearance of the petitioners has been revoked inasmuch as the disclosure of the same would not be conducive to security and safety considerations and international relations.

113. In the present case, the twin tests set out in Para 74 and 75 of the ***Madhyamam*** (supra), are satisfied *viz*. (i) the State has satisfied that the national security considerations are involved (ii) the State has satisfied that the abrogation of principles of natural justice is justified.

114. As far as accepting the report of the concerned agency in a sealed cover is concerned, this Court finds that resorting to any other less restrictive means was not possible in the facts and circumstances of the present case. Given the highly sensitive nature of the material/ apprehension, there is no scope for this Court in these proceedings to either remove the same from the zone of consideration altogether or to provide a copy thereof to the petitioners, or to any *amicus curie* for that matter [which is one of the "less restrictive" means referred to in Para 171[10] and 172[11] of ***Madhyamam***

[10] 171. …….To safeguard the claimant against a potential injury to procedural guarantees in public interest immunity proceedings, we have recognised a power in the court to appoint an amicus curiae. The appointment of an amicus curiae will balance concerns of confidentiality with the need to preserve public confidence in the objectivity of the justice delivery process.

[11] 172 The amicus curiae appointed by the Court shall be given access to the materials sought to be withheld by the State. The amicus curiae shall be allowed to interact with the applicant and their counsel before the proceedings to ascertain their case to enable them to make effective submissions on the necessity of disclosure. However, the amicus curiae shall not interact with the applicant or their counsel after the public interest immunity proceeding has begun and the counsel has viewed the document sought to be withheld. The amicus curiae shall to the best of their ability represent the interests of the applicant. The amicus curiae would be bound by oath to not disclose or discuss the material with any other person, including the applicant or their counsel.

(supra)].

115. The petitioners have pitched their case only on the denial of principles of natural justice, which according to the petitioners, by itself, and without anything more, vitiates the impugned action. In view of the settled legal position as adverted to hereinabove, this contention is rejected.

**STATUTORY REQUIREMENT UNDER RULE 12 OF THE 2023 RULES.**

116. Strong reliance has been placed on behalf of the petitioners on Rule 12 of the 2023 Rules, which provides as under:

> ***"12. Power to suspend or cancel security clearance and security programme****.—(1) The Director General, after giving the entity an opportunity of being heard, and for reasons to be recorded in writing, may suspend for a period not exceeding one year or cancel or impose conditions in respect of any security clearance granted or security programme approved under these rules, where he has any reasonable grounds to believe and considers such action necessary, in the interests of national security or civil aviation security or if the entity has contravened or failed to comply with any condition of security clearance or security programme or provision of these rules.*
>
> *(2) After conducting an enquiry by an officer authorised by the Director General, the suspension may be revoked or the security clearance or security programme may be cancelled."*

117. It is contended that since the statutory rule itself contemplates that the cancellation of security clearance must be preceded by an opportunity of hearing, it is impermissible to take any action in disregard of the said procedure. The said argument is misconceived.

118. In ***Ex Armyman's*** (supra), it has been expressly observed that in a situation involving national security, a party cannot insist for a strict observation of principles of natural justice and that in such cases, it is the duty of this Court to read into and provide for statutory exclusion if not

expressly provided for in the rules governing the field.

119. The above observations to the effect that "statutory exclusion" must be read into the rules, have been cited with approval by Supreme Court in ***Digi Cable*** (supra)[12], ***Madhyamam*** (supra)[13] and ***Justice KS Puttaswamy (5J) v. Union of India*** (supra)[14] and by this Court in ***Sublime Software***

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[12] 15. In somewhat similar circumstances, this Court while repelling this submission laid down the following principles of law in Ex-Armymen's Protection Services (P) Ltd. v. Union of India [Ex-Armymen's Protection Services (P) Ltd. v. Union of India, (2014) 5 SCC 409] in paras 16 and 17 which read as under: (SCC p. 416)

> "16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman [Secy. of State for Home Deptt. v. Rehman, (2003) 1 AC 153 : (2001) 3 WLR 877 (HL)] : (AC p. 192C)
>
> '50. … [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.'
>
> 17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."

16. Having perused the note filed by the Union of India, which resulted in cancellation of permission, we are of the considered opinion that in the facts of this case, the appellant was not entitled to claim any prior notice before passing of the cancellation order in question.

[13] (c) The judgments of this court in Ex-Armymen's Protection Services (supra) and Digi Cable Network (supra) held that the principles of natural justice may be excluded when on the facts of the case, national security concerns overweigh the duty of fairness;

[14] 407. We may point out that this Court has held in Ex-Armymen's Protection Services (P) Ltd. v. Union of India that what is in the interest of national security is not a question of law but it is a matter of policy. We would like to reproduce the following discussion therefrom : (SCC p. 416, paras 16-17)

> "16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman : (AC p. 192-C, para 50)
> '50. … [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.'
> 17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for

(supra)[15].

120. Also, it has been rightly pointed out by the learned Solicitor General that Rule 12 does not expressly provide for any consequence of non-compliance with the requirement to afford a hearing.

121. In De Smith's Judicial Review (Sixth Edition), it has been stated as under -

> *"In order to decide whether a presumption that a provision is "mandatory" is in fact rebutted, the whole scope and purpose of the enactment must be considered, and one must assess "the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act".*

122. This Court is of the considered view that interpreting Rule 12 as mandating a pre-decisional hearing in every case, regardless of the nature of security concerns, would frustrate the very objective for which the Director General of the Bureau of Civil Aviation Security has been vested with powers to issue directions/orders in the interest of national and civil aviation security. The imperative to act swiftly and decisively in urgent/emergent situations, would be seriously undermined by such an interpretation.

123. It is also notable that the impugned action taken by the Director General of Bureau of Civil Aviation is also consistent with the stipulation incorporated in the communication whereby the security clearance of the petitioners was renewed on 21.12.2022, wherein it was expressly provided as under:

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statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."

[15] 12.…As held by the Apex Court in Ex-Armymen's Protection Services (supra) the principles of natural justice can be given a go-by in the matters related to security and sovereignty of the country….

> *"9. Director General, BCAS reserves the right to revoke this security clearance at any time without assigning any reasons thereof, in the interest of national/ civil aviation security."*

124. Also, the authority and the statutory mandate to take the impugned action also flows from Section 6 of the 2024 Act, in which it has been specifically provided as under:-

> *"6. (1) The Director General of Bureau of Civil Aviation Security or any other officer specially empowered in this behalf by the Central Government may, from time to time, by order, issue directions, consistent with the provisions of this Act and the rules made thereunder, with respect to any of the matters specified in clauses (i), (j), (o), (ze), and (zg) of sub-section (2) of section 10, to any person or persons using any aerodrome, or engaged in the aircraft operations, air traffic control, maintenance and operation of aerodrome, or safeguarding civil aviation against acts of unlawful interference, in any case where the Director General of Bureau of Civil Aviation Security or such other officer is satisfied that in the interests of the security of India or to ensure security of civil aviation operations, it is necessary so to do.*
>
> *(2) Every person to whom the order is issued under sub-section (1) shall comply with such order."*

125. A bare reading of the aforesaid provision makes it clear that the power conferred by the aforesaid statutory provision is peremptory and not contingent or depending on any statutory rules including Rule 12 of the 2023 Rules.

126. Section 6 makes it obligatory on the Director General of Bureau of Civil Aviation to issue any direction/order for the purpose of safeguarding and securing the civil aviation operations and in the interest of security of India.

127. It has been rightly pointed out by the learned Solicitor General that the same is also mandated under India's international obligation under Annexure 17 of the Convention on International Civil Aviation which

mandates the contracting States to ensure civil aviation security, including control of access to restrictive areas and background checks of individual. In the context of a ground/cargo handling agency, with access to sensitive areas of airport/s which operates in a sensitive domain, any national security concerns would inherently necessitate swift executive action.

128. The relevant extract of Annexure 17 of the Convention on International Civil Aviation is reproduced as under:-

> *"2.1 Objectives*
>
> *2.1.1 Each Contracting State shall have as its primary objective the safety of passengers, crew, ground personnel and the general public in all matters related to safeguarding against acts of unlawful interference with civil aviation.*
> *2.1.2 Each Contracting State shall establish an organization and develop and implement regulations, practices and procedures to safeguard civil aviation against acts of unlawful interference taking into account the safety, regularity and efficiency of flights.*
> *2.1.3 Each Contracting State shall ensure that such an organization and such regulations, practices and procedures:*
> *a) protect the safety of passengers, crew, ground personnel and the general public in all matters related to safeguarding against acts of unlawful interference with civil aviation; and*
> *b) are capable of responding rapidly to meet any increased security threat.*
>
> *2.1.4 Each Contracting State shall ensure appropriate protection of sensitive aviation security information.*
>
> *4.2 Measures relating to access control*
> *4.2.1 Each Contracting State shall ensure that the access to airside areas at airports serving civil aviation is controlled in order to prevent unauthorized entry.*
> *4.2.2 Each Contracting State shall ensure that security restricted areas are established at each airport serving civil aviation designated by the State based upon a security risk assessment carried out by the relevant national authorities.*
> *4.2.3 Each Contracting State shall ensure that identification systems are established and implemented in respect of persons and vehicles in order to prevent unauthorized access to airside areas and security restricted*

> *areas. Access shall be granted only to those with an operational need or other legitimate reason to be there. Identity and authorization shall be verified at designated checkpoints before access is allowed to airside areas and security restricted areas.*
> *4.2.4 Each Contracting State shall ensure that the movement of persons and vehicles to and from the aircraft is supervised in security restricted areas in order to prevent unauthorized access to aircraft.*
> *4.2.5 Each Contracting State shall establish measures to ensure that persons other than passengers, together with items carried, are screened prior to entry into airport security restricted areas.*
> *4.2.6 Each Contracting State shall ensure the use of appropriate screening methods that are capable of detecting the presence of explosives and explosive devices carried by persons other than passengers on their persons or in their items carried. Where these methods are not applied continuously, they shall be used in an unpredictable manner.*
> *4.2.7 Each Contracting State shall ensure that vehicles being granted access to security restricted areas, together with items contained within them, are subject to screening or other appropriate security controls in accordance with a risk assessment carried out by the relevant national authorities."*

129. Any action taken by the Director General of the Bureau of Civil Aviation for the purpose of revocation of any security clearance on the basis of inputs received from the law enforcement/intelligence agency cannot be considered to be an act inconsistent with the Aircrafts Rules 2023, contrary to what has been contended on behalf of the petitioners.

130. Section 6 cannot be interpreted in a manner which divests the Director General of the Bureau of Civil Aviation Security of the authority to take emergent action, even if warranted, based on security considerations. Such an interpretation, as canvassed on behalf of the petitioners would completely defeat the purpose of the statutory stipulation.

131. In, ***P. Nirathilingam v. Annaya Nadar and Others***, (2001) 9 SCC 673, the Court has observed as under –

> *"20. The principle is well settled that an interpretation of the statutory provision which defeats the intent and purpose for which the statute was*

*enacted should be avoided."*

132. In ***Tata Power Company Limited v. Reliance Energy Limited and Others***, (2009) 16 SCC 659, while emphasising upon the purposive interpretation of the statute the Court had observed as under -

> ***"Purposive construction***
> *101. Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn like nitrogen, out of air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose. [See Justice Frankfurter, "Some Reflextions on the Reading of Statutes", 47 Columbia LR 527, at p. 538 (1947), Union of India v. Ranbaxy Laboratories Ltd. and D. Purushotama Reddy v. K. Sateesh.]*
> ***Analysis***
> *102. In this case the relevance of chapter heading is more for the purpose of arriving at a conclusion as to whether the arrangement and scheme of the statute is such that it can be said be relatable to different types of licensees on the one hand and a generating company which does not require a licence on the other. If by reason of a provision of a statute the generating companies are excluded from the licensing provisions, one of the principal tools of interpretation is that the mischief which was sought to be remedied may not be brought back by a side door. It has to be borne in mind that if the licence raj is brought back through the side door or regulations seeking to achieve the same purpose which Parliament intended to avoid, there would be a possibility of misinterpretation and misapplication of statute. For the said purpose even the history of the Act may be noticed. It is from this point of view that the ambiguity, if any, must be found out."*

133. To read Rule 12 as mandating any inflexible procedural requirement/s, even in cases involving emergent national security considerations, would defeat the purpose of the Rule. Such an approach not only disregards the purpose behind vesting wide and immediate powers in the Director General but also impedes the fulfilment of India's international obligations under the Convention on International Civil Aviation. Accordingly, such an interpretation deserves to be rejected.

134. It has also been contended on behalf of the petitioners that the power to issue directions under the present legislation, as also under legislations such as the DDA Act 1957, NDMC Act, 1994 and U.P. Urban Planning and Development Act, 1973, permits only generic directions for the purpose of administrative actions/ fulfilling the purpose of the legislation/s, and does not extend to taking specific measures against any particular individual/entity in a particular factual conspectus. The said contention is misconceived given the language, framework and context of the concerned statutory provision/s. The statutory provisions referred to by the petitioners are not couched in the same language as in terms of Section 6 of the 2024 Act.

135. In context of DDA Act 1957, specific reliance has been placed on the following observation of the Court in ***Poonam Verma and Ors. Vs.Delhi development Authority*** (2007) 13 SCC 154 –

> *"13. Having failed to establish any legal right in themselves as also purported deficiency in services on the part of the respondent before competent legal forums, they took recourse to remedies on administrative side which stricto sensu were not available. It has not been shown as to on what premise the Central Government can interfere with the day-to-day affairs of the respondent. Section 41 of the Act, only envisages that the respondent would carry out such directions that may be issued by the Central Government from time to time for the efficient administration of the Act. The same does not take within its fold an order which can be passed by the Central Government in the matter of allotment of flats by the Authority. Section 41 speaks about policy decision. Any direction issued must have a nexus with the efficient administration of the Act. It has nothing to do with carrying out of the plans of the authority in respect of a particular scheme.*
>
> *xxx xxx xxx*
>
> *15. Evidently, the Central Government had no say in the matter either on its own or under the Act. In terms of the brochure, Section 41 of the Act does not clothe any jurisdiction upon the Central Government to issue*

*such a direction."*

136. The said observations are in the context of Section 41 of the DDA Act ; the same is reproduced as under –

> ***"41. Control by Central Government**.—(1) The Authority shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.*
>
> *(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Authority under this Act, any dispute arises between the Authority and the Central Government the decision of the Central Government on such dispute shall be final.*
>
> *[(3) The Central Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:*
>
> *Provided that the Central Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.]"*

137. A perusal of the above provision makes it evident that it is couched in general terms. In contrast, Section 6 specifically and expressly empowers the Director General of BCAS to issue directions/orders to any person in respect of matters listed under clauses (i), (j), (o), (ze), and (zg) of Section 10(2), where such action is necessary in the interest of national security. It is a specifically tailored provision designed to address situations involving national security, vesting authority in the Director General to take remedial/ preventive action.

138. Accordingly, the petitioners' reliance on statutory provisions in the DDA Act is misplaced and has no bearing on the present case. Moreover, the statutory frameworks under the DDA Act, NDMC Act, and U.P. Urban Planning and Development Act were enacted to govern administrative and

urban planning functions. These statutes do not contain provisions that specifically address national security. In contrast, Section 6 specifically refers to and empower the Director General of Civil Aviation Security to issue orders/directions to ensure the safe operation of the aerodrome and safeguarding civil aviation operations in the interest of national security.

139. As such, for all the above reasons, the alleged infraction of Rule 12 of Aircraft (Security) Rules, 2023, cannot impinge upon the validity of the impugned action.

## CONCLUSION

140. For the above reasons, I find no merit in the present petitions; the same are consequently dismissed. Pending applications also stand dismissed.

**SACHIN DATTA, J**

**JULY 7, 2025/***at/sv*