

Reserved On : 17/07/2025

Pronounced On : 25/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 812 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 13061 of 2024

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 812 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 13061 of 2024

With

R/LETTERS PATENT APPEAL NO. 814 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 12699 of 2024

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 814 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 12699 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR.JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No
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AHMEDABAD MUNICIPAL CORPORATION,
THROUGH MUNICIPAL COMMISSIONER

Versus

SHAIKH ASIF AHMED MOHAMMED HANIF

Appearance:

MR G H VIRK(7392) for the Appellant(s) No. 1
MR SIMRANJITSINGH H VIRK(11607) for the Appellant(s) No. 1
MR SAHIL M SHAH(6318) for the Respondent(s) No. 1
MR SANKET K PANDYA(9451) for the Respondent(s) No. 1
MR SHALIN MEHTA, SENIOR ADVOCATE WITH MR K M ANTANI for the
Respondent(s) No. 1-3 (IN LPA No.814/2025)

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR.JUSTICE R. T. VACHHANI

COMMON CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Since the aforesaid Letters Patent Appeals arise from the similar judgement and order, the facts of Letters Patent Appeal No.814 of 2025 in Special Civil Application No.12699 of 2024 are incorporated hereinabove.

FACTS

2. The appeal is directed against the CAV judgement dated 20.01.2025 passed by the learned Single Judge in the captioned writ petition, whereby the learned Single Judge has allowed the writ petition by setting aside the order of termination of the respondents-original petitioners, who were appointed as Station Fire Officers by the appellant - Ahmedabad Municipal Corporation ("the appellant-Corporation" for short) on probation from 2016 to 2019.

3. Pursuant to the advertisement issued on 26.10.2018 for filling-up the post of Station Fire Officer, the respondents-original petitioners applied for the said post. One of the qualifications, as mentioned in the advertisement, was that a candidate must possess Station Officer's Course of Training at the National Fire Service College (NFSC), Nagpur. Accordingly, the respondents were declared successful in the recruitment process and appointed as Station Fire Officers on 28.05.2019. It appears that due to some private complaint

received, the appellant-Corporation called upon the respondents on 30.11.2022 to provide the evidence with regard to their entry into the NFSC, Nagpur. While the respondents were on probation, show-cause notices were issued on 24.08.2023 for termination of their service. The respondents assailed the same by filing writ petitions being Special Civil Application No.16166 of 2023 and allied matters before this Court. By a common order dated 26.10.2023, this Court directed the appellant-Corporation to conduct a departmental inquiry in accordance with Rule 9 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 and accordingly, the appellant-Corporation issued charge-sheets dated 01.01.2024 for holding the departmental inquiry for an illegal entry in the NFSC, Nagpur, by producing false recommendations. It appears that again a writ petition was filed being Special Civil Application No.2436 of 2024 raising grievance against the departmental inquiry. The said writ petition was disposed of vide order dated 19.02.2024 reserving liberty in favour of the petitioner(s) therein to rely upon any lacuna in the departmental proceedings in case, the same is challenged or resulted in punishment.

4. After the regular departmental inquiry was conducted, the Inquiry Officer, vide an Inquiry Report dated 10.06.2024, held the charges as

proved. Accordingly, a final show-cause notice dated 29.07.2024 was issued by the appellant-Corporation to the respondents, which was thereafter, challenged by filing a writ petition being Special Civil Application No.11894 of 2004 challenging the inquiry report as well as the charge-sheet(s) dated 01.01.2024. By the order dated 09.08.2024, this Court disposed of the writ petition directing the appellant-Corporation to accept the representation of the respondents opposing the departmental proceedings conducted against them.

5. Thereafter, the respondents made a representation dated 16.08.2024 and accordingly, final orders of punishment dated 22.08.2024 terminating the services of the respondents was passed. The respondents thereafter, challenged the aforesaid actions, including the departmental proceedings by filing the captioned writ petition being Special Civil Application No.12699 of 2024. Learned Single Judge has allowed the said writ petition, which has given rise to the present appeals.

SUBMISSIONS ON BEHALF OF APPELLANT-CORPORATION

6. Learned advocate Mr.Virk appearing for the appellant-Corporation at the outset, has submitted that the respondents-original petitioners, while getting admission in NFSC,

Nagpur, for the course of Sub-Officer's Training have produced false recommendations of the respective entities. It is submitted that the respondent No.1 had secured admission in the NFSC, Nagpur by producing the Sponsorship Letter of Koshi Hydro Electric Corporation Ltd., Madhepura, Bihar and the respondent Nos.2 and 3 had produced the Sponsorship Letter of the Central Public Works Department, New Delhi (CPWD). On the basis of such mandatory services, which were required for undergoing the training course at the NFSC, Nagpur, the respondents applied to undertake Sub-Officer's Course, and accordingly, the certificate was also issued to them about completion of such training course by the NFSC, Nagpur.

7. It is submitted by learned advocate Mr.Virk that on a complaint received by the Vigilance Cell by one Shri Mustafabhai Musabhai Patel, the entire inquiry was undertaken and it was found that the entity being Koshi Hydro Electric Corporation Ltd. does not exist at all. So far as the Sponsorship Letter issued by the CPWD, New Delhi, is concerned, it is submitted that upon an inquiry made to the CPWD by the Vigilance Department, it came to know that they had never issued any Sponsorship Letter to the respondent Nos.2 and 3. It is submitted that the respondents have procured the certificate of completion of

Sub-Officer's Course of training of the NFSC, Nagpur by producing forged and false documents and hence, the appointment of the Station Fire Officer in the appellant-Corporation would be *non est* in eyes of law.

8. It is further submitted by learned advocate Mr.Virk that full-fledged departmental inquiry has been held, as per the provisions of Rule 9 of the Disciplinary and Appeal Rules, 1971, and hence, the learned Single Judge fell in error in setting aside the termination order of the respondents, who were on probation. It is submitted that the NFSC, Nagpur, has also registered an F.I.R. and Koshi Hydro Electric Corporation Ltd. is also named in such F.I.R., by which the Sponsorship Letter has been issued upon the respondent No.1. It is submitted that learned Single Judge fell in error in misconstruing the term "misconduct". In this context, he has placed reliance on Section 56 of the Gujarat Provincial Municipal Corporations Act, 1949 and has submitted that the act of the respondents of supplying the forged Sponsorship Letters to the NFSC, Nagpur, to secure the admission in the Sub-Officer's Course, is illegal and thus, they have committed fraud.

9. Learned advocate Mr.Virk at the outset, has also pointed out Clause 19 of advertisement and

has submitted that such clause categorically stipulates that in future, after securing appointment, if it is found that a candidate has produced false documents or evidence of their date of birth, educational qualification, age, caste, experience etc., his appointment may be cancelled at any stage.

10. Learned advocate Mr.Virk has further submitted that in fact, the respondents, before the Vigilance Officer, have admitted that they have no documentary evidence to point out about their sponsorship of the respective entities. It is submitted that the respondents have admitted that they had secured admission in the NFSC, Nagpur, through an agent, after giving him some amount. It is submitted that when a specific query was raised by the Vigilance Officer to give any evidence about Koshi Hydro Electric Corporation Ltd., the respondent No.1 has categorically admitted that he does not know anything since the agent had prepared the documents about their eligibility, and he has categorically admitted that he has not served in Koshi Hydro Electric Corporation Ltd.

11. Learned advocate Mr.Virk has similarly pointed out the statements made by the respondent Nos.2 and 3 before the Vigilance Officer. It is submitted that respondent Nos.2 and 3 did not

produce any document of their sponsorship of the CPWD, and have admitted that no such documents were supplied by them. Thus, it is contended that in wake of a specific statement made before the Vigilance Officer, admitting that they did not have any documentary evidence to show that they were the employees of the entities, of which they have secured the Sponsorship Letter(s), learned Single Judge ought to have rejected the petition filed by the respondents challenging their termination.

12. In support of his submission, learned advocate Mr.Virk has placed reliance on the judgements of the Apex Court in the cases of Ex SIG. Man Kanhaiya Kumar vs. Union of India and Ors., (2018) 14 S.C.C. 279 and Indian Oil Corporation Limited vs. Rajendra D. Harmalkar, (2022) 17 S.C.C. 361. Thus, it is urged that the judgement and order passed by the learned Single Judge may be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS-ORIGINAL PETITIONERS

13. In response to the aforesaid submissions, learned Senior Advocate Mr.Mehta assisted by learned advocate Mr.Sahil Shah has urged that the judgement and order passed by the learned Single Judge may not be interfered with as the same is precisely passed, after appreciating the facts.

At the outset, it is submitted that the appellant-Corporation has illegally initiated the departmental proceedings against the respondents-original petitioners by considering the act of the respondents by alleging that they had secured admission for undergoing Sub-Officer's training course at the NFSC, Nagpur by terming the same as "misconduct". In support this contention, he has placed reliance on the decision of the Apex Court in the case of Union of India and Ors. vs. J. Ahmed, (1979) 2 S.C.C. 286.

14. It is submitted by learned Senior Advocate Mr.Mehta that any act done by the respondents prior to securing the appointment in the appellant-Corporation cannot be considered as "misconduct". It is submitted that the learned Single Judge has precisely placed reliance on the judgement of the Apex Court in the case of Rasiklal Vaghajibhai Patel vs. Ahmedabad Municipal Corporation and Anr., (1985) 2 S.C.C. 35 and held that since the alleged act of procuring the admission in the NFSC, Nagpur is not listed as a "misconduct" in the Rules, the appellant-Corporation had no authority to hold the departmental proceedings. It is submitted that the act done in past cannot be exhumed to the detriment of the respondents. He has submitted that it is not the case of the appellant-Corporation that they had presented

fake or bogus degree of the NFSC, Nagpur, for securing the appointment and hence, the appellant-Corporation cannot question their entry in the NFSC, Nagpur.

15. Learned Senior Advocate Mr.Mehta has referred to the Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971 and has submitted that the same would apply to the misconduct in case of those employees, who have committed irregularity or misconduct during their service and not to any conduct or act, which has been done prior to securing of the appointment. It is submitted that NFSC, Nagpur, till date has neither doubted the certificate issued by the entities nor entry in the course has been declared illegal and fraudulent and hence, the appellant-Corporation has no jurisdiction or authority to question the entry of the respondents for undertaking Sub-Officer's Course at the NFSC, Nagpur. While referring to Clause-19 of the advertisement, which has been referred to by learned advocate Mr.Virk, it is submitted that the same would only apply to the certificates of educational qualification, which are produced at the time of appointment, and not prior to securing appointment. It is submitted that the respondents were misled in signing the Vigilance Statements and the Inquiry Officer was supposed to apply his mind in defense taken in this regard, which he

has failed to do so. He has further submitted that the disciplinary proceedings are conducted by invoking Rule 9 of the Discipline and Appeal Rules, 1971 hence, the Disciplinary Authority was required to follow the mandate of Rule 9(21) of the Rules, which is not done, since, no findings or reasoning are recorded by the Disciplinary Authority while proving the charge against the respondents. In support of his submission, he has placed reliance on the decision of the Apex Court in the case of G.Vallikumari vs. Andhra Educational Societies and Ors., (2010) 2 SCC 497.

16. It is submitted by learned Senior Advocate Mr.Mehta that other appointees appointed from 2014 to 2016, (total 17 in number), whose list has been produced and have also undertaken the course at NFSC, Nagpur, have not either been issued show-cause notices or any explanation has been called for from them by the authorities. By placing reliance on the decision of the Apex Court in the case of Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. vs. Rajendra Singh, (2013) 12 S.C.C. 372, it is submitted that the action of the appellant-Corporation is discriminatory in nature and violative of Article 14 of the Constitution of India, as no action has been taken against the other appointees.

17. Learned Senior Advocate Mr.Mehta, while placing reliance on the decision rendered by the Apex Court in the case of The Management of Narendra & Company Private Limited vs. The Workmen of Narendra & Company, (2016) 3 S.C.C. 340, has submitted that this Court, while examining the intra-court appeal, may not interfere with the judgment and order passed by the learned Single Judge unless the same is arbitrary and absolutely against the law.

18. In response to the aforesaid submissions, learned advocate Mr.Virk, on instructions, has further submitted that with regard to the list of 17 persons, who have been annexed in the petition, appropriate inquiry will be undertaken by the appellant-Corporation and the respondents-original petitioners cannot claim equity in negativity. It is submitted that the learned Single Judge has not considered the scope of judicial review in the departmental proceedings. In this regard, he has placed reliance on the CAV judgement of the learned Single Judge dated 07.01.2022 passed in Special Civil Application No.10060 of 2004.

19. We have heard the learned advocates appearing for the respective parties at length and also perused the documents as pointed out by them and the case laws cited by the respective parties are also considered by us.

ANALYSIS OF FACTS

20. The following facts are established from the record of the captioned Special Civil Application No.12699 of 2024.

21. Pursuant to the advertisement dated 26.10.2018 issued by the appellant-Corporation initiating the recruitment process to the post of Station Fire Officer, the respondents-original petitioners applied for the same. One of the qualifications prescribed in the advertisement was that the aspirant must have possessed the Sub-Officer's Training Course at the NFSC, Nagpur. The respondents-original petitioners, after clearing the recruitment process, were appointed on probation basis on 28.05.2019.

22. It appears that a complaint was filed by one Shri Mustafabhai Musabhai Patel before the Deputy Municipal Commissioner (Vigilance) of the appellant-Corporation, levelling the allegations about the forged Sponsorship Letters produced by the respondents to secure admission for undergoing the Sub-Officer's Training Course at the NFSC, Nagpur.

23. Thus, as per the requirement of the advertisement, in order to secure appointment to the post of Station Fire Officer, the aspirant had to produce the certificate of training at

NFSC, Nagpur. It is also not disputed that as per the requirement of the NFSC Nagpur, the candidate, in order to secure the admission in the Training Course of Sub-Officer's, which is established by the Ministry of Home Affairs, Government of India, has to supply Sponsorship Letter from the entity, in which he has been serving. Accordingly, respondent No.1, by submitting a Sponsorship Letter of Koshi Hydro Electric Corporation Ltd. secured entry in NFSC, Nagpur, whereas respondent Nos.2 and 3 produced Sponsorship Letters of CPWD, New Delhi. A relevant portion of one of the certificates of the respondent No.1, Sudhirkumar Dadubhai Gadhavi, is incorporated as under:

"Certified that Shri Gadhavi Sudhirkumar Dadubhai of Koshi Hydro Electric Corporation Ltd., Madhepura (Bihar) has successfully completed the 34th Sub-Officers' Course of the National Fire Service College, at Regional Training Center Kolkata from 7th July 2014 to 26th December 2014 and was placed in Honours Class."

24. Thus, as per the aforesaid certificate, respondent No.1 appears to be an employee of Koshi Hydro Electric Corporation Ltd., which sponsored him to undergo Sub-Officers' Course at NFSC, at Regional Training Centre Kolkata. On the complaint received, a Vigilance inquiry was initiated and the respondents were asked to remain present. The statement of respondent No.1 was recorded on 30.12.2022. A specific query

relating to Koshi Hydro Electric Corporation Ltd. was put before him by the Vigilance Officer. In response, he has admitted that on inquiring from the NFSC, Nagpur, it came to his knowledge that the admission can be secured through an agent, and accordingly he contacted one agent at Nagpur. A question was put by the Vigilance Officer to point out the basis on which he has secured the Sponsorship Letter from Koshi Hydro Electric Corporation Ltd., in response, he has submitted that he does not know anything and educational qualification documents were undertaken by the agent and he has admitted that *"he has not served at that place."*

25. Similarly, statement of respondent No.2 was taken on 05.01.2023 by the Vigilance Officer and he has admitted that he does not have the documents to prove that he served at CPWD, New Delhi, and as and when he procures the same, he would supply it. Respondent No.3 has given his statement before the Vigilance Officer on 02.03.2023. He has also denied any document relating to the sponsorship of CPWD, New Delhi.

26. The appellant-Corporation accordingly, inquired about the entities and it was found that Koshi Hydro Electric Corporation Ltd. does not exist at all, whereas CPWD, New Delhi, vide a communication dated 06.03.2023 had informed the

Corporation that they did not have any information with regard to the Sponsorship Letters of respondent nos.2 and 3.

27. Accordingly, the appellant-Corporation issued show-cause notices, which were further subject matter of challenge before this Court and thereafter, on disposal of the writ petitions, finally the departmental proceedings proceeded and after holding a full-fledged departmental inquiry, as per Rule 9 of the Discipline and Appeal Rules, 1971, the charges were proved against the respondents and ultimately, they were terminated from service.

SCOPE OF JUDICIAL REVIEW IN THE DEPARTMENTAL PROCEEDINGS :

28. Before, we deal with the leading submissions of the respondents relating to "misconduct", we may at this stage, also discuss the scope of judicial review in the disciplinary proceedings, which is a very vital aspect to be kept in mind while interfering with the punishment order. The learned single judge has not examined the facet of interference in punishment. In the present case, it is pertinent to note that the respondents-original petitioners were on probation when the departmental inquiry was initiated.

29. In this regard, we refer to the recent decision of the Apex Court in the case of SBI vs. Ajai Kumar Srivastava, (2021) 2 S.C.C. 612. The Apex Court has reiterated the principles governing the judicial review in the disciplinary proceedings. The Apex Court has held thus:

"22. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in State of T.N. v. T.V. Venugopalan [State of T.N. v. T.V. Venugopalan, (1994) 6 SCC 302 : 1994 SCC (L&S) 1385] and later in State of T.N. v. A. Rajapandian [State of T.N. v. A. Rajapandian, (1995) 1 SCC 216 : 1995 SCC (L&S) 292] and further examined by the three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] wherein it has been held as under: (B.C. Chaturvedi case [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , SCC pp. 759-60, para 13)

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court/tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

23. It has been consistently followed in the later decision of this Court in H.P. SEB v. Mahesh Dahiya [H.P. SEB v. Mahesh Dahiya, (2017) 1 SCC 768 : (2017) 1 SCC

(L&S) 297] and recently by the three-Judge Bench of this Court in *Pravin Kumar v. Union of India* [*Pravin Kumar v. Union of India*, (2020) 9 SCC 471 : (2021) 1 SCC (L&S) 103].

24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact. 25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine: (i) whether the enquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

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26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry. 27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the

finding of guilt even in the departmental enquiry proceedings."

30. Thus, the Apex Court has asserted that "*the Constitutional Court, while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution, would not interfere with the findings of fact arrived at in the departmental inquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.*" The three parameters, as mentioned hereinabove, are only required to be examined and determined by the Court, while dealing with the propriety of the disciplinary proceedings. The Court has only to see that – (i) whether the inquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; and (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion. In the present case, all the three parameters are satisfied. It

cannot be held that the finding of the Inquiry Officer is based on no evidence. The disciplinary proceedings are held in compliance of the natural justice since full opportunity was granted to the petitioner to defend his case.

31. The respondents have also questioned the departmental inquiry by pressing Rule 9 (22) of the Discipline and Appeal Rules, 1971. The same is as under:

"9. Procedure for imposing major penalties:-

(22)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of imputations of misconduct or misbehavior or of any culpable act or omission;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each articles of charge;

(d) the finding on each article of charge and the reasons therefore.

Explanation : If in the opinion of the Inquiry Authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge :

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The Inquiry Authority, where it is not itself the Disciplinary Authority shall forward to the Disciplinary Authority the records of inquiry which shall included-

(a) the report prepared by it under clause (i),

(b) the written statement of defence, if any, submitted by the Government servant.

(c) the oral and documentary evidence produced in the course of the inquiry.

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry, and

(e) the orders, if any, made by the Disciplinary Authority and the Inquiry Authority in regard to the inquiry."

32. In our opinion, we do not find any violation of Rule 9(22) of the Discipline and Appeal Rules, 1971, in light of the nature of proceedings. A bare perusal of the inquiry officers report and the punishment order passed by the Disciplinary Authority reveals that the same is exhaustively passed, after ample opportunity was extended to the respondents-original petitioners to produce any supportive documents. As recorded in the order of termination and also in the inquiry report, the respondents were given enough opportunity to produce any documentary evidence with regard to their Sponsorship Letters. However, it is specifically recorded that they did not produce anything to substantiate that they were either the employees of such entities or the Sponsorship Letters produced by them for securing training course at the NFSC, Nagpur were premised on legal document. At this stage, we may refer that in fact, before the Vigilance Officer, the respondents have not denied their production of the Sponsorship Letters from the Institutes, and simultaneously have not produced any documents. Thus, in such circumstances, assuming that there is part compliance of the provision of

Rule 21 of the Rules, the same cannot be fatal to the departmental inquiry.

33. It is pertinent to note that all the respondents were on probation, when such inquiry was initiated. It is contended by the respondents before the Vigilance Officer that they were misled in making the above statements however, nothing is pointed out to us to show that the respondents have ever made any grievance or complaint against the alleged coercion or deluding by the Vigilance Officer to any other authority. Thus, this argument appears to be an afterthought, and is deserves to be rejected.

ISSUE OF MISCONDUCT :

34. The respondents, have primarily, contended that they cannot be subjected to departmental proceedings as their act securing the admission for training for Sub-Officers' Course in the NFSC, Nagpur is not a misconduct. It is contended that whatever done was done in past and the same cannot impede their appointment since the Sub-Officers' Course, which they had undertaken at the NFSC, Nagpur and their services and documents produced therein are not questioned and are not declared illegal. It is contended that since they satisfied the requirement of the advertisement of production of certificate of Sub-Officers' Training Course of the NFSC, Nagpur, and since

the NFSC, Nagpur has not doubted the same, it is not open for the appellant-Corporation to terminate their services or hold the departmental proceedings by referring to any act done prior to securing the appointment.

35. By accepting the aforesaid submissions, the learned Single Judge has set aside the termination order by placing reliance on the judgement of the Apex Court in the case of ***Rasiklal Vaghajibhai Patel (supra)***. Except the reliance placed on the said judgement, learned Single Judge has not delved into the validity or legality of the departmental proceedings and on the contrary, it is held that the "*unilateral action to conduct a fishing and roving inquiry into the validity of the admissions and certificates is beyond its authority.*" We respectfully do not agree with the view expressed by the learned Single Judge for the following reasons:

(a) The judgement of the Apex Court in the case of ***Rasiklal Vaghajibhai Patel (supra)*** cannot come to the rescue of the respondents since a perusal of the same would reveal that the Apex Court has placed reliance on the judgement of the Apex Court in the case of *Glaxo Laboratories v. The Presiding Officer Labour Court Meerut & Ors.*,

(1984) 1 S.C.R. 230. It is held therein that *"unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct"*. The decision of **Glaxo Laboratories (supra)** has been distinguished in the case of **T.K.Raju (supra)**, by holding that the term misconduct is a generic term.

(b) In the case of **Rasiklal Vaghajibhai Patel (supra)**, the facts suggest that an employee has made a false suggestion that he had voluntarily left service. Instead of filling up the *"removal from service"*, he had filled-in that he had *"voluntarily left"* his previous service in his application. In light of these facts, the Apex Court has held that such an act of an employee since is not prescribed in the Service Standing Order, the employer could not have imposed punishment by treating the same as *"misconduct."*

36. In the present case, the issue is about production of forged documents, while securing entry in the NFSC, Nagpur for undergoing the Course of Sub-Officers' Training hence, the learned Single Judge has erred in setting aside the termination of the respondents by applying

the decision in the case of **Rasiklal Vaghajibhai Patel (supra)**.

37. In the case of **M. Bhaskaran (supra)**, the Apex Court, while examining the *pari materia* rules to that of Rule 3 of the Conduct Rules, 1971, in the case where an employee had secured appointment in Railway by forging the casual labourer service cards, has held that independent of the Rules 3(1)(i) and (iii) of the Railway Services (Conduct) Rules, 1966, which are *pari materia* to the existing rules, under which the present respondents were charged, it is held that "*such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer.*" Thus, the contention of the respondents, with regard to the absence of the misconduct in Rule 3 of the Conduct Rules, 1971, and hence, the lack of authority by the appellant in conducting the inquiry; dose not merit acceptance.

38. We may now at this stage, refer to the observations of the Apex Court in the case of **Ex**

SIG. Man Kanhaiya Kumar (supra). The Apex Court, while dealing with the facts of the appellant therein, who had secured appointment by enrolling himself in the army post on the basis of fake Relationship Certificate, has held as under:

"9. It is also an admitted position that but for the said fake Relationship Certificate, the appellant could not have got enrolment in the Army. Thus, he got enrolment by playing a fraud. The fraud vitiates the entire action and in such a case the enrolment obtained by the appellant, which was fraudulent.

10. It has been so held by this Court time and again. In Union of India & Ors. v. M. Bhaskaran¹, this Court gave a firm and stern message that if any employment is obtained by committing fraud, the same cannot be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of employer. This position was reiterated in Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav.

11. Likewise, in Ram Saran v. IG of Police, CRPF & Ors.³, where the appellant was working on the post of Police Constable and his services were terminated 27 years after joining the service, on grounds of using Fake Birth Certificate, such a termination was held to be valid in law. Discussion that followed, in the process, is as under:

"6. In response, learned counsel for the respondents submitted that in a disciplined force there was no scope for taking lenient view for a person who obtained employment on the basis of forged document. It was pointed out that on the basis of binding instructions contained in the Government of India, Department of Personnel and Training, OM No. 11012/7/91 Estt. (A) dated 19-5-1993 (GO No. 29 of 1993) dismissal from service was the only punishment imposable. In fact, the DIG, CRPF had referred to the said instructions while differing from the punishment proposed. Rule 24 of the CCS (Pension) Rules reads as follows:

"24. Forfeiture of service on dismissal or removal.— Dismissal or removal of a government servant from a service or post entails, forfeiture of his past service."

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8. The courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] commonly known as *Wednesbury case* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (See *V. Ramana v. A.P. SRTC* [(2005) 7 SCC 338 : 2006 SCC (L&S) 69] .

9. In *R. Vishwanatha Pillai v. State of Kerala* [(2004) 2 SCC 105 : 2004 SCC (L&S) 350] it was observed as follows: (SCC pp. 116-17, para 19)

"19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise

equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

*12. In Rajeshwar Baburao Bone v. State of Maharashtra & Anr.*⁴, appointment was obtained by the appellant using fake caste certificate. Termination on that ground held to be valid. Para 12 reads as under:

"12. In the facts and circumstances of this case, we are of the opinion that the impugned order [Rajeshwar Baburao Bone v. State of Maharashtra, WP No. 5160 of 2012, order dated 17-12-2013 (Bom)] passed by the High Court needs no interference and this appeal deserves to be dismissed. However, we hold that because of inordinate delay in considering the certificate of the appellant, the benefit of the certificate already availed by the appellant shall not be disturbed making it clear that the appellant shall not be entitled to take any further benefit of reservation in future including the benefit of continuing in service."

13. In the aforesaid scenario, the argument of the appellant that there should have been an inquiry into the matter as per the provisions of the Army Act, 1950 is totally untenable. Even otherwise, when the appellant himself has admitted that Relationship Certificate produced by him is fake, the procedure as laid down in Section 20 of the Army Act, 1950 would be an empty formality.

*14. In Union of India & Ors. v. Major General Madan Lal Yadav (Retd.)*⁵, this Court opined that a person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court and, in the process, the Court invoked the Latin dictum "Nullus Commodum Capere Potest De Injuria Sua Propria"

39. The Apex Court, after survey of array of judgements on the issue of procuring employment

by committing fraud or by producing fraudulent documents, has invoked the principle that "fraud vitiates the entire act". While referring to the judgement in the case of Union of India & Ors. vs. M. Bhaskaran, 1995 Supp. (4) S.C.C. 100, it is held that if any employment is obtained by committing fraud, the same cannot be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of employer. In the case of Ram Saran Vs. IG of Police, CRPF & Ors., (2006) 2 S.C.C. 541, which is also referred, wherein the Police Constable had secured appointment by producing fake Birth Certificate, the Apex Court has upheld the termination, after 27 years of service.

40. The case of R. Vishwanatha Pillai vs. State of Kerala, (2004) 2 S.C.C. 105, is also referred therein. The Apex Court has held that "*A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud.*" Thus, the Apex Court held that the appointment on such post was void and non est in the eye of law.

41. In the case of Union of India & Ors. v. Major General Madan Lal Yadav (Retd.), (1996) 4 S.C.C. 127, the Apex Court has opined that "a person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court and, in the process, the Court invoked the Latin dictum "*Nullus Commodum Capere Potest De Injuria Sua Propria*"

42. In the case of Devendra Kumar vs. State of Uttaranchal, 2013 (9) S.C.C. 363, wherein the Police Constable, who had secured his appointment by filing a false affidavit, suppressing his involvement in a criminal offence, was terminated from service. In that case, the Apex Court has held thus:

"11. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide: *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.*, AIR 1994 SC 853. In *Lazarus Estate Ltd. v. Besalay*, 1956 All E.R. 349, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

12. In *Andhra Pradesh State Financial Corporation v. M/s. GAR Re- Rolling Mills & Anr.*, AIR 1994 SC 2151; and *State of Maharashtra & Ors. v. Prabhu*, (1994) 2 SCC 481, this Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. "Equity is, also,

known to prevent the law from the crafty evasions and subtleties invented to evade law."

13. In Smt. Shrisht Dhawan v. M/s. Shaw Bros., AIR 1992 SC 1555, it has been held as under:- "Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

14. In United India Insurance Company Ltd. v. Rajendra Singh & Ors., AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in M.P. Mittal v. State of Haryana & Ors., AIR 1984 SC 1888.

15. In Ram Chandra Singh v. Savitri Devi & Ors., AIR 2004 SC 4096, this Court held that "misrepresentation itself amounts to fraud", and further held "fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad." The said judgment was re-considered and approved by this Court in Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav, (2004) 6 SCC 325).

16. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the Court should not perpetuate the fraud by entertaining petitions on their behalf. In Union of India & Ors. v. M. Bhaskaran, AIR 1996 SC 686, this Court, after placing reliance upon and approving its earlier judgment in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, (1990) 3 SCC 655, observed as under:- "If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer."

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23. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot

sanctify the same. "Subla Fundamento cedit opus"- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim Nullus Commodum Capere Potest De Injuria Sua Propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide: Union of India v. Maj. Gen. Madan Lal Yadav, AIR 1996 SC 1340; and Lily Thomas v. Union of India & Ors., AIR 2000 SC 1650). Nor can a person claim any right arising out of his own wrong doing. (Juri Ex Injuria Non Oritur)."

43. The Apex Court thus, in case of suppression of material information, which has direct impact on the appointment, has held that *"if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. "Subla Fundamento cedit opus"- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim Nullus Commodum Capere Potest De Injuria Sua Propria applies."*

44. In the present case, the doctrine of *"Subla Fundamento cedit opus"* will directly apply. The foundation of securing appointment by the respondents in getting entry in the NFSC, Nagpur for undergoing training of Sub-Officers' Course is premised on an illegal act. Thus, the action of the entry itself, which ultimately, has led to their successful completion of Sub-Officers' Course, which has been further relied upon by

them for securing the appointment in the appellant-Corporation, can be said to be illegal. Though, the Sub-Officers Course may be legal, but its foundation based on illegal Sponsorship Letter is illegal hence, it will have direct impact on the sanctity of securing their appointment.

45. In case, the respondents had not forged their Sponsorship Letters, they would not have secured the entry in NFSC, Nagpur. The quintessential condition for securing entry at the NFSC, Nagpur was to have Sponsorship Letter of an existing entity/establishment, in which they were serving. In the present case, the respondents-original petitioners have miserably failed to point out a single document to show that they were the employees of their respective sponsoring establishments.

46. Hence, when the initial action or act of the respondents in securing entry in the NFSC, Nagpur itself is illegal, the subsequent conduct of successfully undergoing the course of Sub-Officers' Training from the NFSC, Nagpur, cannot be treated "legal" and such action cannot be sanctified, even though NFSC, Nagpur has not declared as illegal. We are informed that NFSC, Nagpur has already filed an FIR in cases of fraudulent securing entry.

47. It is not open for the respondents to plead before the court of law to take advantage of their wrong and plead bar of any law to frustrate the departmental proceedings and subsequent termination order. The contention about invocation of Rule 3 of the Conduct Rules, 1971 by the appellant-Corporation cannot be said to be illegal, more particularly in light of Clause-19 of the advertisement, which is translated and incorporated hereinunder:

"If the candidate has provided any details in the online application that are incorrect or found to be incorrect at any stage of the recruitment process, then his application will be rejected at that stage and even if he has obtained eligibility (passing standard), his candidature will be considered cancelled/ and in future also if any documentary evidence like date of birth, educational qualification, age, caste, experience and others provided by the candidate is found to be false or suspicious, appropriate legal action will be taken against him and if such a candidate has been selected for appointment, the appointment will be cancelled at any stage."

48. Thus, the appellant-Corporation, by way of Clause-19 of the advertisement, has specifically cautioned the aspirants like the respondents by incorporating the clause that if in future, any documentary evidence relating to date of birth, educational qualification, age, caste, experience and other evidence, is found to be false or doubtful, then they would be subject to appropriate proceedings and their appointment can be cancelled at any point of time. The said

clause indubitably empowers/authorizes the appellant-Corporation to initiate appropriate action on having the knowledge of dubious documents. This condition cannot be confined to the illegal acts committed at the time of appointment, but can be invoked and covers all the illegal acts committed prior to securing the appointment. If the contention of the respondents is accepted, then such proposition will be an anathema to the recruitment process. The recruiting agency or the employer will be restrained from taking any action against its employees, who have secured appointments by forging the documents which were existing prior to their appointment, such as caste certificates, date of birth certificate, educational certificates, prior employment etc. The operation of Clause-19 cannot be restricted to those documents which are provided at the time of selection of appointment, but the employer or recruiting agency has the authority under the law to verify any documents which has direct nexus with the employment. The exercise of verification of the documents can be undertaken at any stage during the tenure of service, and the service or employment can be brought to an end at any stage.

49. The Full bench of the Apex Court in the case of State of Bihar vs. Kirti Narayan Prasad, 2019

(13) S.C.C. 250, has examined the issue of securing appointment surreptitiously on production of the forged documents. It is held thus:

"17 In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise."

50. The learned Single Judge fell in error in setting aside the termination order by exclusively placing reliance on the judgement of the Apex Court in the case of **Rasiklal Vaghajibhai Patel (supra)**. In fact, the appellant-Corporation, before the learned Single Judge, has categorically raised the contention about fraud having been done by the respondents,

however, the learned Single Judge has rejected such contention by recording that it was impermissible for the Corporation to conduct a departmental inquiry to invalidate the admissions and certificates as the same is beyond its authority. The Apex Court has held that any appointment which is secured surreptitiously is illegal and void *ab initio*, and since the appointment is void *ab initio*, the appointee/selectee cannot be said to civil servants, therefore holding the disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise. In the present case, the respondents, who were still probationers, have at every stage questioned the inquiry, right from inception, by filing three writ petitions, and ultimately a full-fledged departmental inquiry was held, though before the Vigilance Officer they have admitted that they have no documents to prove their sponsorship. Thus, we find that the judgement and order passed by the learned Single Judge runs contrary to the settled legal precedent and the reliance placed on the judgment passed by the Apex Court in the case of ***Rasiklal Vaghajibhai Patel (supra)*** will not apply to the case of the respondents. Hence, we are left with no other option, but to allow the present appeals by quashing and setting aside the termination order(s) passed by the learned Single Judge in

the captioned writ petition(s). There cannot be any cavil on the proposition of law as enunciated by the Apex Court in the judgments, on which reliance is placed by the respondents, however, in light of nature of misconduct committed by the respondents, rendering their initial appointment as *non-est* and void ab-initio, the ratio emerging from such decisions will not come to the rescue of the respondents. The respondents have also alleged discrimination on the ground that the other employees, who have secured the training by adopting similar method are spared, and no inquiry is initiated. The principles are now settled that an illegality or irregularity cannot be a ground to claim equality or discrimination under Articles 14 and 16 of the Constitution of India. The concept of "equality", as envisaged under Article 14 of the Constitution, is a positive concept which cannot be enforced in a negative manner. Hence, the punishment cannot be set aside on the ground of discrimination. Nonetheless, it assured to us by learned advocate Mr.Virk appearing for the appellant-Corporation, that apposite steps will also be taken against all such employees, who have procured the training by producing fake Sponsorship Letters.

51. In light of the foregoing analysis and observations, the impugned judgements and orders passed by the learned Single Judge in the

captioned writ petitions are hereby quashed and set aside. The present appeals are **allowed** accordingly. As a sequel, the connected civil applications stand **disposed of**.

Registry to place a copy of this order in the connected matter.

Sd/-
(A. S. SUPEHIA, J)

Sd/- .
(R. T. VACHHANI, J)

After the judgement was pronounced, learned senior advocate Mr. Shalin Mehta requests for stay of the judgement for some time however, we do not accede to the request in light of the foregoing observations more particularly, the nature of misconduct.

Sd/-
(A. S. SUPEHIA, J)

Sd/- .
(R. T. VACHHANI, J)

NVMEWADA