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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.5559 of 2026

Decided on: 20th April, 2026

Bishwa Nath Sharma **.....Petitioner**

Versus

State of H.P. and another **.....Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?[1]

For the Petitioner: Mr. B.L. Soni and Mr. Nitin Soni, Advocates.

For the Respondents: Mr. Anup Rattan, Advocate General with Mr. L.N. Sharma, Additional Advocate General.

Jyotsna Rewal Dua, Judge

Notice. Mr. L.N. Sharma, learned Additional Advocate General, appears and waives service of notice on behalf of the respondents.

Considering the grievance of the petitioner, the order impugned herein and the order being passed hereinafter, reply of this writ petition is not required to be called for from the respondents. Matter has accordingly been heard at this stage.

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[1]**Whether reporters of print and electronic media may be allowed to see the order? Yes.**

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2. *'Nemo Judex in Causa Sua'*. No man shall be a judge in his own cause. It appears that respondent No.1-the Chief Secretary to the Government of Himachal Pradesh missed this basic legal principle while passing the impugned order, thereby deciding the revision petition preferred by the petitioner. Under Section 32 of the Himachal Pradesh Town and Country Planning Act, 1977 (as amended) (in short 'the Act'), any applicant aggrieved by an order passed under any of the provisions of the Act may within thirty days of the communication of the order to him prefer an appeal to an Officer not below the rank of a Secretary appointed by the State Government in this behalf. The section reads as under:-

> *"32.(1) Any applicant aggrieved by an order passed under any of the provisions of this Act may, within thirty days of the date of communication of order to him, prefer an appeal to an officer not below the rank of a Secretary, appointed by the State Government in this behalf, and such an appeal shall be made in such manner and accompanied by such fees as may be prescribed.*
>
> *(2) The officer appointed under sub-section (1) shall, after giving a reasonable opportunity of being heard, decide the appeal preferred under this section within a period of six months from the date of filing of the same.*
>
> *(3) Subject to the provisions of section 33 the order of the appellate authority shall be final."*

The petitioner presented appeal under Section 32 of the Act against orders of refusal of regularization

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dated 19.02.2025 and 23.04.2025 passed by the Assistant Town Planner, Sub-Divisional Town Planning Office, Manali, District Kullu, H.P. Respondent No.1 dismissed this appeal on 11.11.2025 (Annexure P-1). The order was communicated to the petitioner on 12.11.2025. Section 33 of the Act provides remedy of revision against the order passed by the appellate authority under Section 32 as under:-

> *"33. The State Government may, at any time, but not later than twelve months of the passing of the order, on its own motion or on an application filed by the person aggrieved by any order by the appellate authority under section 32 within thirty days of the date of communication of such order to him, call for and examine the record of any case disposed of by the Director under section-31 or appellate authority under section 32 for the purpose of satisfying itself as to the correctness of the order and as to the regularity of any proceeding of the Director or the appellate authority and may, when calling such record direct that the execution of the order be suspended. The State Government may, after examining the record, pass such order as it thinks fit and its order shall be final and no further application for revision or review thereof shall lie:*
>
> *Provided that no order shall be passed unless the person affected thereby and the Director has been given a reasonable opportunity of being heard."*

Petitioner availed the remedy provided under Section 33 of the Act and filed his revision petition. The revision petition was dismissed by respondent No.1 on 15.01.2026 as under:-

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> *"Matter heard. The present Petitioner was accorded a reasonable opportunity of being heard which has been granted at both stages, i.e. Appellate jurisdiction under Section 32 & Revisional jurisdiction under Section 33 of the Act ibid. The present revision petition has been heard. The Ld. Senior Counsel for the petitioner has vehemently argued and submitted before this Authority that the alleged unauthorized construction in shape of a four storeyed Hotel is abutting to the residential, property of the Petitioner which is two storeyed structure(s). This matter has been dealt in the appellate jurisdiction by this Authority in details vide order dated 11.11.2025 under Section 32 of the Act ibid wherein it was held that there are no setbacks left by the Petitioner between Hotel and residential House. Hence, the claim of the Petitioner is futile as the case is beyond permissible deviations and is outside the purview of statutory norms and regulations of composition and regularization of the said structure. In view of the aforesaid reason supra, the present revision petition is without merits and the order dated 11.11.2025 is legal, proper and justified. The present revision petition has been heard. The present revision petition warrants for no interference by this Authority under Section 33 of the Act ibid. The revision petition is hereby disposed off. The file be consigned to the record room. Copy of this order shall be provided to the parties concerned.*
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> *Announced today in open Court on this 15th Day of January 2026."*

3. It was respondent No.1, who had decided petitioner's appeal under Section 32 of the Act on 11.11.2025. Respondent No.1 could not have been judge in his own cause. The impugned order dated 15.01.2026 makes it apparent that respondent No.1 was very well aware of the fact that it is he, who had dismissed petitioner's appeal on 11.11.2025 and it was the order

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passed on 11.11.2025 that was impugned in the revision petition. Yet, the highest *quasi-judicial* authority heard the revision petition against his own order and dismissed the same holding that the order passed by him in the appellate jurisdiction does not suffer from any illegality. He held that his order was legal, proper and justified.

4. One of the basic element of fair hearing is '*nemo judex in cause sua*' and also that 'Justice should not only be done but should manifestly be seen to be done'. It would be appropriate to refer to a decision rendered by the Hon'ble Apex Court in ***Canara Bank and others Versus Debasis Das and others***[2], wherein basic legal principles were reiterated as under:-

> *"21. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" as stated in Earl of Derby's case[3] that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa quia non potest esse judex at pars" (Co.Litt. 1418), that is, "no man ought to be a judge in*

[2] (2003) 4 SCC 557
[3] (1605) 12 Co Rep 114

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> *his own case, because he cannot act as Judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur at altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" (See Bosewell's case (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."*

Hon'ble Apex Court in ***Ram and Shyam Company Versus State of Haryana and others***[4] held that an appeal cannot lie from Ceasar to Ceasar's wife. It was observed as under:-

> *"Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries*[5] *rejected the writ petition observing that "the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him". We remain unimpressed. Ordinarily it is true that the court has*

[4] (1985) 3 SCC 267
[5] (1979) 4 SCC 22

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imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in State of U.P. v. Mohammad Nooh[6] *it is observed "that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy". It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary io law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clitch of appeal from Ceasar to Ceasar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."*

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[6] AIR 1958 SC 86

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Concerning '*Nemo Judex in Causa Sua',* Hon'ble High Court of Karnataka, Bengaluru in ***Pradeep Kumar and another Versus The Commissioner Hindu Religious Institutions and Charitable Endowments and others***[7] summed up following pertinent observations including the one that the officer, who has passed the order as inferior court/authority, cannot legally test the correctness of his own decision while exercising the powers of superior court in appeal or a revision against his own order, as otherwise, the very purpose of appeal/revision would become illusory, elusive, otiose and nugatory:-

> *"18. The principle of natural justice 'Nemo judex in causa sua' consists of the rule against bias or interest and is based on three maxims:*
>
> - *No man shall be a judge in his own cause;*
> - *Justice should not only be done but must manifestly and undoubtedly be seen to be done;*
> - *Judges including quasi-judicial authorities, like Caesar's wife should be above suspicion*
>
> *19. 'Nemo Judex In Causa Sua' is popularly known as the rule against bias. It is the minimal requirement of the natural justice that the authority giving decision must be composed of impartial persons acting fairly, without prejudice and bias. Any mental condition that would prevent a judge or juror from being fair and impartial is called bias. Bias is a particular influential power which sways the judgment; the inclination or propensity of the mind towards a particular object. It can also be described as predisposition or a preconceived opinion that prevents a person from impartially evaluating facts that have been presented for determination; a prejudice*

[7] Writ Petition No.5297 of 2020, decided alongwith connected matter on 16.06.2020

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which impairs/obstructs a fair decision from being passed.

20. *There is no gainsaying the fact that an officer or a quasi-judicial authority who functions or acts as an inferior authority renders his decision after forming his opinion about the facts and circumstances obtained in the case. The legality, soundness and correctness of the said decision is tested by way of an appeal or a revision or a challenge preferred before the superior authority. The officer who has passed the order as inferior court or authority cannot legally test the correctness of his own decision while exercising the powers of the superior court in appeal or a revision to his own order. In the event the appeal/revision against the inferior court or authority is allowed to be heard by the same officer or authority who has passed the order impugned in appeal/revision, it would render its very purpose illusory, elusive, otiose and nugatory frustrating the purpose of its filing before a higher authority who is sitting in judgment over the order of the inferior authority.*

21. *An appeal/revision before a superior authority to an order passed by an inferior authority is conceptually different from a review. A review is reconsideration of the subject by the same judge/authority to cure an error which may be apparent on the face of the record while an appeal/revision is a re-hearing of the matter by a superior Court/authority to test the correctness of the decision of the lower court/authority. Allowing the appeal/revision to be heard by the same officer who had passed the basic order would tantamount to reducing the appellate/revisional jurisdiction into that of review. It is therefore clear that no person should hear an appeal/revision against his own order since the same would be opposed to the very basic principles of natural justice as stated supra."*

5. Principles of natural justice must prevail in *quasi*-judicial actions. Considering the number of petitions filed before this Court challenging decisions/orders rendered by *quasi*-judicial authorities and examining the

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decisions/orders passed by these authorities, it is deemed necessary & would be in the interest of justice and also in the interest of all concerned stakeholders that *quasi*-judicial authorities augment and sharpen their legal knowledge, especially of fundamental principles of natural justice. Accordingly, the State of Himachal Pradesh, through learned Advocate General, is directed to formulate in collaboration with the Himachal Pradesh Judicial Academy, a comprehensive training program at H.P. Judicial Academy, Shimla, wherein focus shall be to equip the concerned Officers/*Quasi*-Judicial Authorities with better knowledge of law governing their fields, especially the principles of natural justice. By way of abundant caution, it is clarified that this direction has been issued for positive re-enforcement & institutional advancement and in no manner, whatsoever, undermines or questions the knowledge, competency or capability of the concerned Officers/*Quasi*-Judicial Authorities. The mode and manner of imparting training at H.P. Judicial Academy, Shimla be worked out within a period of four weeks. For this purpose, compliance be reported on ***28.05.2026***.

Accordingly, this writ petition is allowed. The impugned order dated 15.01.2026 (Annexure P-2) is

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quashed and set aside. The revision petition preferred by the petitioner shall be decided by the competent authority in accordance with law, *inter alia*, keeping in view the above observations.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

Jyotsna Rewal Dua
Judge

April 20, 2026
Mukesh