M/S. Nagarjuna Construction Co. Ltd vs Govt. Of A.P. & Ors on 20 October, 2008

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Author: Arijit Pasayat

Bench: P. Sathasivam, Arijit Pasayat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1438 OF 2004

M/s Nagarjuna Construction Co. Ltd. ..Appellant

versus

Govt. of Andhra Pradesh and Ors. ..Respondents

WITH

CIVIL APPEAL NO. 1439 of 2004
CIVIL APPEAL NO. 1442 of 2004
CIVIL APPEAL NO. 1443 of 2004
CIVIL APPEAL NO. 1444 of 2004

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Since common points are involved in these appeals, they are disposed of by this common judgment.

2. Writ Petitions were filed by the appellants before the Andhra Pradesh High Court praying for quashing the order passed by the State Government in Memorandum No.8817/M.II(1)/2001-6, dated 4.2.2002 and the consequent demand notice issued by the Director of Mines and Geology and the proceedings of the Deputy Director, Mines and Geology. The appellant in each case is engaged in the business of construction, engineering and civil works. In each case the appellant had participated in the tenders invited by the Bharat Heavy Electricals Ltd. (in short `BHEL') for the purpose of executing their part of the contract which is with NTPC for levelling and grading. BHEL had awarded the contract to the appellant- company for execution of the work. According to the appellant, the material required for the purpose of execution of the contract in terms of the specifications prescribed under the contract is earth, morrum gravel and mixture of these or any other material approved by the BHEL. The appellant had obtained rights for excavation of good earth from the ryots of patta lands in the vicinity as well as from the quarry lease holders. Each appellant was supplying the materials from the source in which they obtained right of excavation of materials. Huge quantity of these materials was supplied under the contract. The Assistant Director of Mines and Geology required BHEL to show cause as to why action should not be initiated to realize a sum of money towards seigniorage fee which includes five times penalty over and above the normal seigniorage fee. The Assistant Director required BHEL to produce documentary evidence, if any, with regard to the source from where the materials had been procured alongwith the permits issued by the Department. BHEL filed a detailed reply disputing the liability in the matter. It was indicated that the requisite application for allotment of quarries and other formalities were to be done directly by the sub contractors concerned. The agencies have been paying the seigniorage fee directly to the Department of Mines and Geology. In between meeting was held between the agencies and Department of Mines and Geology, BHEL and the contractors. Detailed minutes were drawn up according to which the Director of Mines and Geology expressed that type of filling materials may have to be decided by the Department of Mines and not by the contractors themselves.

3. Subsequently, demands were raised. Reference was made to certain data supplied by BHEL to the Vigilance and Enforcement Department. It was observed that filling material was partly gravel and partly ordinary clay in respect of which seigniorage fee is liable to be paid. The appellant in each case requested the authority to withdraw the demands while agreeing to pay the seigniorage fee under protest.

4. The Assistant Director, Mines and Geology again sent demand notice. The Deputy Director of Mines and Geology raised demand notice directing the appellant to pay a higher sum being the balance of seigniorage fee after giving credit to the fees already paid. At this stage the appellant submitted detailed representation to the Secretary (Mines), Industries and Commerce Department, Government of Andhra Pradesh inter-alia highlighting various contradictory notices issued by the Assistant Director and the Deputy Director. The Government of Andhra Pradesh in exercise of suo motu revisional jurisdiction under Rule 35-A of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (in short the `Andhra Pradesh Rules') set aside the revised demand issued by the Deputy Director confirming the original demand and the appellant was directed to pay the balance amount. Writ Petition was filed before the High Court challenging the revisional order. The High Court by its order dated 20.7.2001 allowed the writ petition at the admission stage holding that the

order of the State Government is misconceived and unsustainable on account of having been issued without any notice to the affected persons. However, leave was granted to the Government to initiate fresh proceedings if so desired and if so permitted by law after giving notice and opportunity to the appropriate parties. Notices were issued to all the sub- contractors and after hearing the parties the order impugned before the High Court was passed. Again challenge was made before the High Court.

5. The first stand was that the Government ought not to have passed the impugned order clubbing the companies with the other sub contractors inasmuch as demands raised by the Deputy Director in respect of each party were totally different. Quantity and the nature of materials supplied by each of them and the sources were different and merits of each case was to be gone into separately and it was also submitted that the order of the State Government was passed on surmises and assumptions and indicated non application of mind.

6. It was also submitted that seigniorage fee on the total quantity of earth materials supplied by the company was levied in utter disregard of the analyst report of the material and without any authority to do so. Finally, it was submitted that copy of the report submitted by the Deputy Director of Mines and Geology who was purportedly instructed to inspect the area to ascertain the nomenclature of the materials supplied by the sub contractors to the BHEL was not at point of time supplied to the affected parties. It was submitted that the Government could not have ignored the test and analyst report of the Department of Civil Engineering and Soil Mechanics Division of Andhra Pradesh University which was a relevant piece of evidence. A detailed counter affidavit was filed on behalf of the Joint Director of Mines and Geology, Department of Mines and Geology, Hyderabad. Allegations were disputed. The High Court observed that the Deputy Director of Mines and Geology had played havoc in the matter. He had been placed under suspension. He was found guilty of the charges in the matter of short levy and collection of seigniorage fee. Various charges were framed against him and the enquiry officer appointed has submitted his report upholding him guilty of several charges.

7. The High Court came to hold that the plea of the Government that said officer had acted in collusion with the appellant was not without any basis. The High Court also observed that in reply to the show cause notice BHEL had furnished a list of five sub-contractors who were entrusted with the levelling work. In reply it was stated that the agency had paid certain amounts towards seigniorage fee for the quantities burrowed from the foot of the hills. It was further submitted that in line with the provisions of the contract the agencies are under obligation to accept and deal with the mining department directly. It was therefore the stand of BHEL that it had no mens rea and had always made conscious effort to ensure payment of seigniorage fee by the agencies.

8. It was stated that BHEL was under the impression that the matter would have been decided upon as the department had inspected the sources presumably in the presence of agencies as agreed in the meeting held on 4.9.1999.

9. In the counter-affidavit it was also submitted that the appellants had failed to produce documentary evidence. The Deputy Director had acted on the basis of information furnished by

BHEL. The High Court referred to BHEL's letter dated 8.3.2000 whereby the details of total quantities of filling materials supplied by sub contractors were furnished. According to the data, various mines had been supplied as filling materials. The High Court noticed that there was no evidence to show that seigniorage fee had been paid in respect of filling material.

10. According to the High Court the main question that arose for consideration was the nature of the soil utilized by the appellants in the levelling and grading work undertaken by them under the agreement with BHEL.

11. Stand of the appellants was that the bulk of the materials used by the appellants-companies was earth and the same was not subject to seigniorage fee. It was therefore contended that the initiation of suo motu revisional power and the orders passed are illegal as the order ignored the materials available on record.

12. It was pointed out that what was supplied was gravel from the quarry and the ordinary earth from the patta land and therefore the argument that the total material received by BHEL was partly gravel from sources of foot hills and partly ordinary clay from the tank beds and, therefore, the material is subject to seigniorage fee was vitiated for the reason that there was no material supplied by one of the appellants i.e. M/s Nagarjuna Construction Co. Ltd. from the foothills and the tank bed lands.

13. The State's stand as highlighted before the High Court was about the so-called collusion between the concerned Deputy Director and the appellants and his giving No Objection for the release of the amounts by BHEL. The High Court referred to para 3.03.01 of the specifications of the contract. We will deal with this aspect later.

14. The High Court primarily focused on the role allegedly played by the concerned Deputy Director. It was observed that no permission was taken by any of the appellants to quarry mining as required under law and they had also not made available the details of purchase and lease of private lands for the purpose of excavation of materials. It did not accept the stand that what was utilized was only earth material for filling purpose and the same was not subject to seigniorage fee. The High Court observed that this version of the appellants cannot be accepted as a gospel truth and the conduct of the appellants showed that they were playing hide and seek with the statutory authorities.

15. The High Court noted objection of appellants that the inspection report was not made available either by the Department or the Government as to enable the appellant to file its objections. It rejected the plea with the following observations:

> "However, it is urged that the said inspection report is not made available either by the Department or the Government so as to enable the petitioner-company to file its objections. The petitioner-company admittedly supplied some quantity of gravel also. The source from whom the gravel is purchased and the details of transit waybills are not furnished by the petitioner-company at any point of time. No efforts ever have been made by the petitioner-company to identify and reveal the source of supply of

> material consumed and utilized by it for the purpose of filling in fulfillment of its contractual obligation. Everything is shrouded in mystery. Neither the petitioner-company nor the other sub contractors responded to the repeated queries of the department. The record contains the inspection notes of the sites from where the petitioner-company excavated the material. The memorandum of grounds, which has been treated as an explanation, does not contain any objection as to the non supply of the inspection report. There is no plea of any prejudice having been caused on account of non supply of the said inspection notes. It is not as if the petitioner-company demanded for the inspection notes during the hearing of the revision and the Government failed to furnish the same. In the absence of any such plea and demonstration of any prejudice having been caused on account of non supply of the inspection notes the impugned order cannot be set aside on that score."

16. The High Court also did not find any substance in the plea relating to non consideration of the test and analysis report of the Civil Engineering Department of Andhra University. It was held that it was a self service devise adopted by the appellant. Therefore, it was held that since the Government had arrived at to its decision after hearing the parties no interference is called for.

17. So far as the question of penalty is concerned, it was held that though mens rea is an essential ingredient but the fatual position left no manner of doubt that the appellant was not acting bona fide. The High Court did not also attach importance to the stand taken by the Department in the earlier writ petitions. Accordingly, all the writ petitions were dismissed.

18. The basic stand of the appellants in the appeals is that the basic principles of natural justice have not been followed in the present case. The authorities have acted on certain materials which were collected behind the back of the appellants and the reports submitted by certain authorities. The High Court's conclusion that no prejudice was caused by non supply is really a conclusion without any foundation. Finally, in view of the accepted stand of the State Government in the earlier writ petitions it would not be open for the State Government to take diametrically opposite stand to levy the seigniorage fee. It was also submitted that the report of the Department of Civil Engineering of Andhra Pradesh University was obtained by Governmental authorities. The High Court should not have accepted the stand of the State Government as to why the report was not to be considered. It was also pointed out that the portion of the contract as quoted by the High Court was incomplete. Therefore, it was submitted that view of the High Court is clearly unsustainable.

19. Reference was also made to the judgment dated 3.3.1999 in Writ Petition Nos. 1990, 2271 and 2741 of 1999 filed by the appellant where it was held as follows:

> "the power to collect seigniorage fee at the rates mentioned in Schedule I read with Rule 10 is subject to filling material being declared as minor mineral under Section 3(c) as the fact that earth is a "filling material"

cannot be disputed. As the State Government under Section 15 has the power to levy fee in respect of the minor mineral as declared by the Central Government under Section 3(c) by a notification

published in the official gazette, and since no proceeding is placed before me declaring Earth as minor mineral by the Central Government by a notification published in the official gazette, and in the absence of a notification issued by the Central Government declaring earth as minor mineral, the State Government is not competent to collect seigniorage fee under Rule 10 read with Schedule 1".

20. The Central Government by Notification No.GSR No.95(E) dated 3.2.2000 had notified the earth as a minor mineral and has enabled the State Government to levy seigniorage fee under Rule 10 of the Rules on earth also. The schedule was amended and the entry was re-numbered in the following manner:

> "Item 8: Morram/Gravel-Rs.13-(Rupees thirteen) per cubic meter".

21. The High Court noted that since the amendment came after the contract period was over, it was really of no consequence.

22. It, however, accepted the stand of the State Government that only that ordinary earth which does not contain any mineral content whatsoever alone was exempted from payment of seigniorage fee and there is hardly any earth which does not contain fine particles or other minerals in respect of which seigniorage fee is liable to be charged.

23. Learned counsel for the State, on the other hand, supported the judgment of the High Court and stated that the conduct of the appellants disentitled them from getting inequitable relief. Further more, there was no foundation in the plea that what the State Government had stated earlier would act as an estoppel.

24. We shall first deal with the plea relating to incorrect reflection of the conditions in the contract. The High Court has referred to para 3.03.01 of the specifications of the contract. It reads as follows:

> "The material used for constructing the embankment by earth filling shall be Morram, Gravel, a mixture of these or any other material approved by the Engineer."

25. This is not the correct quotation. In the instant case the expression "earth" is missing. The actual clause reads as follows:

> "The material used for constructing embankment by earth filling shall be earth, morrum, gravel and mixture of these or any other material approved by the engineers. The materials shall be free from lumps, clouds, boulders or rock pieces roots and vegetations, harmful salts and chemicals, organic material, silt, fine sand expansive clays in order to provide stable embankment. Further, in the said specification, it is clearly mentioned that the material for embankment shall be as obtained from a particular source with the preference given to material becoming available from nearby road excavation under the same contract or any other excavation under the same contract."

26. Additionally, it is noticed the High Court has relied on certain records which purportedly contain the inspection notes of the sites from where the appellants had excavated the material. It is to be noted that for the first time before the High Court these records were produced. Since there was no reference to the so called inspection notes at any point of time the question of the appellant pleading prejudice because of non-supply of the same does not arise. The High Court observed that since the appellant had not demanded for the inspection notes during hearing of the revision there was no question of any prejudice. The approach is clearly wrong. At no point of time, not even at the time of hearing of revision petition or in the revisional order there is any reference to the so called inspection notes. Added to that, the High Court did not consider the effect of the stand taken by the Government earlier.

27. In the earlier round of proceedings the respondents had categorically admitted that the appellants utilized earth only as filling material. In the additional counter-affidavit filed by the Joint Secretary of Mines, in the present case it was explained that in the counter affidavit filed on behalf of the respondents dated 18.2.1999 in Writ Petition No.1990/99, the then Assistant Director made a statement that the excavated material is earth which is also liable to levy seigniorage fee. This was a mistake. By the time the counter-affidavit was filed, the Department had no precise knowledge of the locations where excavation was going on or the nature of the soil which was being excavated. It was much later i.e. in December, 1999 pursuant to a meeting between the various contractors and the concerned officials during which it was decided that the locations should be disclosed to the Department. Then the Deputy Director and Assistant Director inspected the areas and opined that the excavated material was not simply earth but gravel and clay. The High Court found the explanation to be convincing. What the High Court seems to have overlooked is that there was a specific admission in the earlier cases. It is also not borne out from the records as to when the so called inspection notes of the Deputy Director and the Assistant Director were made and what was the nature of their report. The High Court's observation that the counter affidavit earlier was on account of inadvertence is without any basis. The observations of the High Court that there was no question of sending the samples to the Department of Civil Engineering are also unsustainable. As a matter of fact it is not a case that the appellants themselves had sent the samples. In fact, the samples were sent by the Department apart from the samples being sent by the appellants. The High Court's observations that they were rightly ignored by Government do not stand to reason. The report was available on record and was not by an ordinary authority, and was by the Department of Andhra Pradesh University.

28. The High Court did not accept the view expressed by a learned Single Judge while disposing of writ petition No.4579 of 2001 filed by one of the sub contractors M/s Gayatri Projects Ltd. Though that order was not challenged by the Department, the Division Bench thought that the decision was not proper. In any event, that question is of no relevance in the present case. The High Court rightly observed that since the amendments referred to, were introduced after the expiry of the contract period they were really of non consequence.

29. Looked at from any angle the judgment of the High Court is unsustainable.

30. The basic principles of natural justice seem to have been disregarded by the State Government while revising the order. It acted on materials which were not supplied to the appellants. Additionally the High Court for the first time made reference to the report/inspection notes which was not even referred to by the State Government while exercising revisional power.

31. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak v. Union of India (1969 (2) SCC 262). Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred" (as per Lord Diplock in Secy. of State for Education and Science v. Metropolitan Borough Council of Tameside, 1976(3) All ER 665 at pp.695f). The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene. To quote the classic passage from the judgment of Lord Greene, M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn: (1947 (2) all All ER pp.682H-683A) "It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word `unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting `unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

32. The conclusions regarding absence of prejudice are, therefore, not sustainable.

33. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

34. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

35. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works (1963 (143) ER 414), the principle was thus stated:

> "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam"

says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

36. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

37. What is meant by the term `principles of natural justice' is not easy to determine. Lord Summer (then Hamilton, L.J.) in Ray v. Local Government Board (1914) 1 KB 160 at p.199:83 LJKB 86) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Sanckman (1943 AC 627: (1948) 2 All ER 337), Lord Wright observed that it was not desirable to attempt `to force it into any procusteam bed' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give `a full and fair opportunity' to every party of being

heard.

38. Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education v. Rice (1911 AC 179:80 LJKB

796), where Lord Loreburn, L.C. observed as follows:

> "Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial....The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari".

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, LO in Spackman v. Plumstead District Board of Works (1985 (10) AC 229:54 LJMC 81), where the learned and noble Lord Chancellor observed as follows:

> "No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice".

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase `justice should not only be done, but should be seen to be done'.

39. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression `civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

40. Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (1855(2) Macg. 1.8, Lord Cranworth defined it as `universal justice'. In James Dunber Smith v. Her Majesty the Queen (1877-78(3) App.Case 614, 623 JC) Sir Robort P. Collier, speaking for the judicial committee of Privy council, used the phrase `the requirements of substantial justice', while in Arthur John Specman v. Plumstead District Board of Works (1884-85(10) App. Case 229, 240), Earl of Selbourne, S.C. preferred the phrase `the substantial requirement of justice'. In Vionet v. Barrett (1885(55) LJRD 39, 41), Lord Esher, MR defined natural justice as `the natural sense of what is right and wrong'. While, however, deciding Hookings v. Smethwick Local Board of Health (1890 (24) QBD 712), Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet's case (supra) chose to define natural justice as `fundamental justice'. In Ridge v. Baldwin (1963(1) WB 569, 578), Harman LJ, in the Court of Appeal countered natural justice with `fair-play in action' a phrase favoured by Bhagawati, J. in Maneka Gandhi v. Union of India (1978 (2) SCR 621). In re R.N. (An Infaot) (1967(2) B617, 530), Lord Parker, CJ, preferred to describe natural justice as `a duty to act fairly'. In fairmount Investments Ltd. v. Secretary to State for Environment (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely described natural justice as `a fair crack of the whip' while Geoffrey Lane, LJ. In Regina v. Secretary of State for Home Affairs Ex Parte Hosenball (1977 (1) WLR 766) preferred the homely phrase `common fairness'.

41. 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 (1605) 12 Co.Rep.114 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 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.

42. We, therefore, set aside the impugned order of the High Court. The matter is remitted to the State Government to re-consider the matter after supplying to the appellants copies of reports/inspection notes on which the Department case rests. It shall also consider the effect of the concession made by the Department in the earlier rounds of proceedings before the High Court.

43. The appeals are allowed but without any order as to costs.

.....J. (Dr. ARIJIT PASAYAT) .....J. (P. SATHASIVAM) New Delhi, October 20, 2008