BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

APPEAL NO. 25 OF 2025

IN THE MATTER OF:

JOHNSON MATTHEY CHEMICALS INDIA PRIVATE LIMITED

…APPELLANT

VERSUS

UTTAR PRADESH POLLUTION CONTROL BOARD

…RESPONDENT

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N.D.O.H: 12.11.2025

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FILED BY:

RAJAT JARIWAL
D/1402/2005
Advocate for the Appellant
TRILEGAL
1st Floor, Wing A&B,
Prius Platinum, D-3, District Centre,
Saket, New Delhi-110017
Mobile: +91-9900589761, +91-9654965148
Email: rajat.jariwal@trilegal.com;

Place: New Delhi
Date: 10.11.2025

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FILED BY:

RAJAT JARIWAL
D/1402/2005
Advocate for the Appellant
TRILEGAL
1st Floor, Wing A&B,
Prius Platinum, D-3, District Centre,
Saket, New Delhi-110017
Mobile: +91-9900589761, +91-9654965148
Email: rajat.jariwal@trilegal.com;

Place: New Delhi
Date: 10.11.2025

2025 SCC OnLine SC 1877

In the Supreme Court of India

(BEFORE MANOJ MISRA AND UJJAL BHUYAN, JJ.)

Triveni Engineering and Industries Ltd. … Appellant(s);

Versus

State of Uttar Pradesh and Others … Respondent(s).

Civil Appeal Nos. 8119-8120 of 2022

Decided on September 1, 2025

Advocates who appeared in this case :

Mr. Kavin Gulati, Sr. Adv., Mr. Mahesh Agarwal, Adv., Mr. Ruchir Ranjan Rai, Adv., Mr. Ankur Saigal, Adv., Mr. Prateek Kumar, Adv., Mr. Arshit Anand, Adv., Ms. Vidisha Swarup, Adv., Mr. Naman Gupta, Adv., Mr. E.C. Agrawala, AOR, For Appellant(s)

Mr. Sudeep Kumar, AOR, Mr. Pradeep Misra, AOR, For Respondent(s)

The Judgment of the Court was delivered by

UJJAL BHUYAN, J.:— These two civil appeals filed under Section 22 of the National Green Tribunal Act, 2010 are directed against orders dated 15.02.2022 and 16.09.2022 passed by the National Green Tribunal, Principal Bench, New Delhi ('NGT' for short) in Original Application No. 71/2021 (*Chandra Shekhar* v. *State of Uttar Pradesh*).

2. By the order dated 15.02.2022, NGT held that the project proponent (appellant herein) had violated the environmental norms which included illegal disposal of untreated effluent, dilution at outlet with fresh water to conceal real status, absence of flow meter at boiler/mill house to avoid monitoring, absence of record of oil and grease stored and absence of Effluent Treatment Plant (ETP) logbook. Thereafter, NGT observed that the joint committee needed to assess the past violations and recover compensation in accordance with law having regard to the nature of the violation, period of violation, cost of remediation and turnover of the project proponent (appellant). The joint committee was directed to submit a supplementary report in this regard.

2.1. By the second order dated 16.09.2022, NGT considered the supplementary report filed by the joint committee on 10.08.2022 and held that compensation of Rs. 18 crores at the rate of 2 percent of annual turnover would be justified. It was directed that the amount may be deposited by the project proponent (appellant) with the District Magistrate, Muzaffarnagar, within one month to be utilized for restoration of the environment.

3. At the outset, a brief recital of facts is considered necessary.

4. Appellant i.e. M/s. Triveni Engineering and Industries Limited is a public limited company incorporated under the Companies Act, 1956. It is engaged in diverse business activities including manufacture of sugar. It is stated that appellant has seven sugar manufacturing units across the State of Uttar Pradesh.

4.1. In the year 1952, appellant under its earlier name, Ganga Sugar Corporation Limited, which was incorporated under the Companies Act, 1913, had acquired the sugar manufacturing unit at village Sheikhpura, Khatauli, Muzaffarnagar District in the State of Uttar Pradesh (sugar mill). It is stated that the sugar mill is a functional unit, having all the necessary permissions as required under the applicable statutes.

4.2. It appears from the record that in the month of March, 2021, respondent No. 2 filed a complaint before the NGT which was registered as Original Application No. 71/2021 (O.A. No. 71/2021) alleging that the sugar mill of the appellant was discharging untreated waste in a particular drain resulting in contamination of ground water in an area of about one and a half kilometer around the sugar mill having depth upto 50 metres.

4.3. By order dated 22.03.2021, NGT constituted a joint committee of Central Pollution Control Board (CPCB), Uttar Pradesh Pollution Control Board (UPPCB) and District Magistrate (DM), Muzaffarnagar. The joint committee was directed to conduct inspection and thereafter to file status report within two months.

4.4. It appears that the sugarcane crushing season for the year 2020-2021 came to an end on 22.05.2021. Joint committee in its report dated 02.07.2021 stated that because of various reasons including conclusion of the sugarcane crushing season and the sugar mill remaining closed on account of the covid pandemic, inspection could not be carried out and prayed for further time to carry out fresh inspection.

4.5. Thereafter, regional office of UPPCB, Muzaffarnagar carried out inspection of the sugar mill and the area around it on 13.09.2021 and observed that no contamination was found in the ground water samples. However, it was observed that further investigation could be carried out when the industry become operational during the next crushing season.

4.6. O.A. No. 71/2021 was heard on 21.09.2021. NGT on perusal of the report declared that it was not satisfied with the stand of the State PCB. NGT was of the view that there was no justification for carrying out inspection when the sugar mill was not functional due to off season. NGT, therefore, directed the joint committee to conduct inspection when the unit was functional and thereafter to furnish a report to it on or before 15.12.2021. It was clarified that the report should indicate status of compliance with the standards as prior to the season, quality of treated effluence and utilization as per protocol/agreement with the users/farmers, further indicating that it should be mentioned whether effluents were reaching any drain leading to river/waterbody with direction to check the

quality of ground water as per parameters relevant to the industry in question, particularly fluoride etc. Reference was made to an order dated 01.09.2021 passed by the NGT in O.A. No. 539/2019 (*Adil Ansari* v. *Dhampur Sugar Mills Limited*) wherein it was directed that ETPs must continue to run for maintenance of bio-mass even during the off season.

4.7. Pursuant to the aforesaid order dated 21.09.2021, the joint committee conducted inspection on 08.12.2021 and submitted report dated 11.01.2022. After extensively referring to the observations, conclusions and recommendations of the joint committee, NGT passed the first impugned order dated 15.02.2022 observing that the report showed violation of the environmental norms by the project proponent (appellant), such as, illegal disposal of untreated effluents etc. while stating that such violation was required to be remedied in terms of the recommendations made in the report. For the past violations, the joint committee was directed to assess the compensation in accordance with law, having regard to the nature of violation, period of violation, cost of remediation and turn over of the project proponent. Joint committee was further directed to submit a supplementary report with copy to the project proponent (appellant) for its response.

4.8. Pursuant to the aforesaid directions, supplementary report was filed by the joint committee on 10.08.2022 whereafter the matter was taken up for hearing on 16.09.2022. NGT recorded that no response was filed by the project proponent (appellant). NGT referred to the report which mentioned that compensation amounts to Rs. 34,20,000.00 for 114 days of violation at the rate of Rs. 30,000.00 per day which works out to Rs. 18 crores at the rate of 2 percent of the annual turnover of Rs. 900 crores. After hearing the learned counsel for the UPPCB, NGT was of the view that having regard to the established illegal discharge of untreated effluents, dilution at the outlet to conceal the real status, absence of monitoring, absence of record of oil and grease stored and ETP logbook, compensation of Rs. 18 crores at the rate of 2 percent of annual turnover would be justified. It was ordered *vide* the second impugned order dated 16.09.2022 that the compensation recovered may be utilized for restoration of the environment. Project proponent (appellant) was directed to deposit the aforesaid amount with the District Magistrate, Muzaffarnagar within one month. The compensation amount was directed to be utilized within six months in terms of the action plan to be prepared by the joint committee, clarifying that UPPCB would be the nodal agency for coordination and compliance.

5. Aggrieved by the aforesaid orders dated 15.02.2022 and 16.09.2022, appellant has preferred the related appeals. By order dated 02.11.2022, permission to file appeal was granted and delay was condoned. Thereafter, notice was issued. This Court also passed an interim order staying the operation of the impugned orders dated 15.02.2022 and 16.09.2022 so far as imposing compensation on the appellant.

6. Learned senior counsel for the appellant submits that the impugned orders dated 15.02.2022 and 16.09.2022 are *non est* in the eye of law in as much as those orders were passed by the NGT in complete violation of the principles of natural justice. Though the entire allegations in O.A. No. 71/2021 were directed against the appellant and though the impugned orders have adversely affected the appellant yet appellant was not made a party to the proceedings in O.A. No. 71/2021. NGT failed to appreciate that the appellant was a necessary party and without issuing notice and giving opportunity of hearing to the appellant, no adverse order against the appellant such as the ones dated 15.02.2022 and 16.09.2022 could have been passed. That being the position, not only the impugned orders but also the entire proceedings in O.A. No. 71/2021 being in absolute violation of the principle of *audi alteram partem* are liable to be set aside and quashed on this ground alone.

6.1. Learned senior counsel asserts that no opportunity of hearing, not to speak of any fair opportunity of hearing, was afforded to the appellant before rendering the findings *vide* the impugned orders dated 15.02.2022 and 16.09.2022.

6.2. Adverting to the reports of the joint committee dated 11.01.2022 and 10.08.2022, learned senior counsel submits that findings recorded in the reports are scientifically not possible. Those are materially different from the readings shown by the data retrieved and recorded by the inspection team during the inspection on 08.12.2021. The joint committee relied upon the reports prepared by third party laboratories which were based on erroneous data. As a result, there are glaring contradictions in the above reports.

6.3. Learned senior counsel also questioned the methodologies adopted by the joint committee in carrying out the inspection and thereafter in submitting the reports. According to him, NGT and the joint committee gave a complete go-bye to the procedure laid down under Sections 21 and 22 of the Water (Prevention and Control of Pollution) Act, 1974. That apart, the reports of the joint committee suffered from factual mistakes in as much as appellant has been maintaining ETP logbook at all times which were provided to the joint committee officials when they had visited the sugar mill for inspection. Likewise, boiler ash records were also maintained. Had an opportunity of hearing being given to the appellant, it could have explained its position *qua* the joint committee reports. NGT accepted the erroneous reports of the joint committee without subjecting the same to further scrutiny by permitting the appellant to have its say in the matter.

6.4. Learned senior counsel also referred to the provisions of Section 19 (1) of the National Green Tribunal Act, 2010 which states that though the NGT shall not be bound by the procedure laid down by the Civil Procedure Code, 1908, it shall be guided by the principles of natural justice. There is clear infraction of Section 19(1) of the National Green Tribunal Act, 2010 in

the present case which has vitiated the impugned orders.

6.5. Summing up his arguments, learned senior counsel submitted that the impugned orders are wholly untenable in law as well as on facts and those are as such liable to be set aside.

7. Learned senior counsel for the respondents on the other hand has supported the impugned orders passed by the NGT. It is submitted that without treatment of the effluent, water was being discharged from the sugar mill of the appellant; the same was being released into the drain which has contaminated the ground water of the area in and around the sugar mill where about 10 to 15 thousand people reside. The entire population is thus exposed to the polluted water and resultant health hazards.

7.1. Learned senior counsel submits that NGT took cognizance of this alarming situation and constituted the joint committee to carry out necessary inspection. Joint committee carried out inspection in a scientific manner and thereafter submitted reports to the NGT. The reports being prepared by a committee of experts was rightly accepted by the NGT. Based on the observations and conclusions reached by the joint committee, NGT passed the impugned orders which calls for no interference.

7.2. Learned senior counsel submits that principles of natural justice cannot be applied as a straight jacket formula. NGT was careful enough to direct the joint committee to furnish copies of its reports to the project proponent (appellant). Appellant was, therefore, very much aware of the contents of the two reports, yet it did not contest the same before the NGT. That being the position, the contentions advanced on behalf of the appellant are without any substance.

7.3. He finally submits that the civil appeals being devoid of merit are, therefore, liable to be dismissed.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

9. At the outset, it would be apposite to refer to some of the relevant statutory provisions.

10. The Water (Prevention and Control of Pollution) Act, 1974 (briefly 'the Water Act' hereinafter) is an act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment with a view to carrying out the purposes aforesaid, of pollution control boards for the prevention and control of water pollution, for conferring on and assigning to such boards, powers and functions relating thereto and for matters connected therewith. Section 2 is the definition clause. Section 2(dd) defines 'outlet' to include any conduit, pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution.

10.1. The expression 'pollution' is also defined. As per Section 2(e), 'pollution' means contamination of water. Section 2(e) reads thus:

> "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

10.2. 'Sewage effluent' has been defined in Section 2(g) and means effluent from any sewerage system or sewage disposal works and includes sullage from open drains. Section 2(gg) defines 'sewer' to mean any conduit pipe or channel, open or closed, carrying sewage or trade effluent.

10.3. 'Stream' has been defined in Section 2(j) and as per the said definition, stream includes:

(i) river;

(ii) water course (whether flowing or for the time being dry);

(iii) inland water (whether natural or artificial);

(iv) sub-terranean waters;

(v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf.

10.4. 'Trade effluent' has been defined in Section 2(k) in the following manner:

> "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process or treatment and disposal system, other than domestic sewage.

10.5. Section 21 of the Water Act is included in Chapter V which deals with prevention and control of water pollution. Sub-section (1) of Section 21 empowers the State Pollution Control Board or any officer authorized by it to take samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into such stream or well for the purposes of analysis. Sub -section (2) however clarifies that the result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible as an evidence in any legal proceedings unless the provisions of sub-sections (3), (4) and (5) are complied with. Sub-sections (1) and (2) of Section 21 are as follows:

> **21. Power to take samples of effluents and procedure to be followed in connection therewith.** —
>
> (1) A State Board or any officer empowered by it in this behalf shall

have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.

(2) The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.

10.6. As noticed above, analysis of any sample of any sewage or trade effluent taken under sub-section (1) would not be admissible as a piece of evidence in any legal proceedings unless the procedure contemplated under sub-sections (3), (4) and (5) are complied with. Let us therefore take note of the provisions contained in sub- sections (3), (4) and (5) of Section 21 which are extracted as under:

* * * * *

(3) Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall—

(*a*) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;

(*b*) in the presence of the occupier or his agent, divide the sample into two parts;

(*c*) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the persons taking the sample and the occupier or his agent;

(*d*) send one container forthwith,—

(*i*) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or recognised by the Central Board under Section 16; and

(*ii*) in any other case, to the laboratory established or recognised by the State Board under Section 17;

(*e*) on the request of the occupier or his agent, send the second container,—

(*i*) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or specified under sub-section (1) of Section 51; and

(*ii*) in any other case, to the laboratory established or specified under sub-section (1) of Section 52.

(4) When a sample of any sewage or trade effluent is taken for

analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (*a*) of sub-section (3) and the occupier or his agent wilfully absents himself, then,—

(*a*) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (*i*) or sub-clause (*ii*), as the case may be, of clause (*e*) of sub-section (3) and such person shall inform the Government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of Section 53, in writing about the wilful absence of the occupier or his agent; and

(*b*) the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

Provided that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.

(5) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (*a*) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (*b*) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (*i*) or sub-clause (*ii*), as the case may be, of clause (*d*) of sub-section (3).

10.7. As can be seen from the above, the person who is taking the sample is required to serve on the person in charge of or having control over the plant or vessel etc. a notice of his intention to have the sample analyzed; take and divide the sample into two parts in the presence of the occupier or his agent. One container after being sealed and signed by both the persons taking the sample and the occupier or his agent is taken to the laboratory established or recognized by the pollution control board (whether central or state) and send the other container in the same manner to the laboratory established under Section 51(1) in case of a union territory and Section 52(1) in any other case. In case the occupier or his agent willfully absents himself from the aforesaid process, then the person taking the sample shall inform the government analyst in writing about the willful absence of the occupier or his agent.

10.8. Section 22 of the Water Act is concerned with reports of the result of analysis on samples taken under Section 21. Section 22 reads thus:

> **22. Reports of the result of analysis on samples taken under section 21.**—(1) Where a sample of any sewage or trade effluent has been sent for analysis to the laboratory established or recognised by the Central Board or, as the case may be, the State Board, the concerned Board analyst appointed under sub-section (3) of Section 53 shall analyse the sample and submit a report in the prescribed form of the result of such analysis in triplicate to the Central Board or the State Board, as the case may be.
>
> (2) On receipt of the report under sub-section (1), one copy of the report shall be sent by the Central Board or the State Board, as the case may be, to the occupier or his agent referred to in Section 21, another copy shall be preserved for production before the court in case any legal proceedings are taken against him and the other copy shall be kept by the concerned Board.
>
> (3) Where a sample has been sent for analysis under clause (*e*) of sub-section (3) or sub-section (4) of Section 21, to any laboratory mentioned therein, the Government analyst referred to in that sub-section shall analyse the sample and submit a report in the prescribed form of the result of the analysis in triplicate to the Central Board or, as the case may be, the State Board which shall comply with the provisions of sub-section (2).
>
> (4) If there is any inconsistency or discrepancy between, or variation in the results of, the analysis carried out by the laboratory established or recognised by the Central Board or the State Board, as the case may be, and that of the laboratory established or specified under Section 51 or Section 52, as the case may be, the report of the latter shall prevail.
>
> (5) Any cost incurred in getting any sample analysed at the request of the occupier or his agent shall be payable by such occupier or his agent and in case of default the same shall be recoverable from him as arrears of land revenue or of public demand.

10.9. As is evident from the above, after a sample of any sewage or trade effluent is sent to the concerned laboratory, the competent analyst shall analyse the samples and submit a report in the prescribed form of the result of such analysis to the pollution control board. A copy of such report shall also be forwarded to the occupier or his agent.

10.10. Section 24 prohibits release or disposal of polluting matter into any stream or well or sewer or on land. Sub-section (1) of Section 24 is relevant and reads as under:

> **24. Prohibition on use of stream or well for disposal of polluting matter, etc.**—(1) Subject to the provisions of this section,—
>
> (*a*) no person shall knowingly cause or permit any poisonous, noxious

or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land; or

(*b*) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

10.11. As per Section 43 of the Water Act, whoever contravenes the provisions of Section 24 shall be punishale with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

11. We now come to the Environment (Protection) Act, 1986 (briefly 'the Environment Act' hereinafter). It is an act to provide for the protection and improvement of environment and for matters connected therewith. Section 2(a) defines 'environment' in the following manner:

> "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

11.1. 'Environmental pollutant' has been defined in Section 2(b) to mean any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment. 'Environmental pollution' is defined under Section 2(c) and means the presence in the environment of any environmental pollutant. Section 2(f) defines 'occupier' in relation to any factory or premises, to mean a person who has control over the affairs of the factory or the premises and includes, in relation to any substance, the person in possession of the substance.

11.2. Sections 7, 8, 14A, 15 and 15A are included in Chapter III which deals with prevention, control and abatement of environmental pollution. Section 7 says that no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed. Similarly, Section 8 says that no person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

11.3. Section 14A has been introduced by way of an amendment in the year 2023 with effect from 01.04.2024. It provides for penalty in the event of contravention of Sections 7 and 8. Section 14A is extracted hereunder:

> **14A. Penalty for contravention of section 7 or section 8.**—(1) If any person, contravenes provisions of Section 7 or Section 8 or the rules made thereunder, he shall be liable to penalty in respect of each such contravention, which shall not be less than one lakh rupees but which

may extend to fifteen lakh rupees.

(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of fifty thousand rupees for every day during which such contravention continues.

11.4. Be it stated that Section 15 was also introduced in the Environment Act by way of the 2023 amendment with effect from 01.04.2024. Section 15 deals with penalty for contravention of the provisions of the Environment Act, rules, orders and directions. Section 15 reads thus:

15. Penalty for contravention of provisions of Act, rules, orders and directions.—(1) Where any person contravenes or does not comply with any of the provisions of this Act or the rules made or orders or directions issued thereunder for which no penalty is provided, he shall be liable to penalty in respect of each such contravention which shall not be less than ten thousand rupees but which may extend to fifteen lakh rupees.

(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of ten thousand rupees for every day during which such contravention continues.

11.5. Similarly, Section 15A provides for penalty for contravention by companies. Section 15A is as follows:

15A. Penalty for contravention by companies.—(1) Where any company contravenes any of the provisions of this Act, the company shall be liable to penalty for each such contravention which shall not be less than one lakh rupees but which may extend to fifteen lakh rupees.

(2) Where any company continues contravention under sub-section (1), the company shall be liable to additional penalty of one lakh rupees for every day during which such contravention continues.

12. To provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to person and property and for matters connected therewith or incidental thereto, the National Green Tribunal Act, 2010 has been enacted. Section 2(1)(c) defines the word 'environment'. It says 'environment' includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.

12.1. Section 2(1)(m) defines 'substantial question relating to environment' and is as follows:

2(*m*) "substantial question relating to environment" shall include an instance where,—

(*i*) there is a direct violation of a specific statutory environmental

obligation by a person by which,—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(*ii*) the environmental consequences relate to a specific activity or a point source of pollution.

12.2. As per Section 14, National Green Tribunal (NGT) has the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved.

12.3. Section 15 deals with the relief, compensation and restitution that NGT may provide. Sub-section (1) of Section 15 reads as under:

15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

(*a*) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(*b*) for restitution of property damaged;

(*c*) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

12.4. Section 17 deals with liability to pay relief or compensation in certain cases. As per sub-section (1), where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage. Sub-section (2) says that if the death, injury or damage cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, NGT may apportion the liability for relief compensation amongst those responsible for such activities, operations and processes on an equitable basis. In case of an accident, NGT shall apply the principle of no fault.

12.5. We now come to Section 19 which deals with the procedure and powers of NGT. Sub-section (1) says that NGT shall not be bound by the procedure laid down by the Civil Procedure Code, 1908 but shall be guided by the principles of natural justice. For the purposes of discharging its functions, NGT shall have the same powers as are vested in a civil court under the Civil Procedure Code, 1908 while trying a suit in respect of the

matters mentioned in sub-section (4) and as per Clause (i), it has the mandate to pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard on any application made or appeal filed under the said Act. Sub-section (5) makes it abundantly clear that all proceedings before NGT shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Penal Code, 1860 and the NGT shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Criminal Procedure Code, 1973.

13. Having adverted to the relevant statutory provisions, let us examine as to how the NGT proceeded in this matter. We have already noticed that a joint committee was constituted by NGT comprising of CPCB, UPPCB and District Magistrate, Muzaffarnagar to conduct inspection of the sugar mill of the appellant when it was functional and thereafter to file status report with regard to handling of the effluents. Pursuant thereto, inspection was carried out on 08.12.2021 whereafter report was submitted on 11.01.2022. General observations of the joint committee as extracted in the impugned order dated 15.02.2022 are as follows:

3.0 OBSERVATIONS

1. The unit M/s Triveni Engineering and Industries Limited, Sugar Unit, Village Sheikhpura, Khatauli, Dist.- Muzaffarnagar is engaged in production of refined sugar by Defco melt Phosphatation followed by Ion Exchange Process (IER) with consented capacity of 16000 TCD.
2. The unit has started its crushing season 2021-2022 on 07th November, 2021 and the unit was operational on the date of visit i.e. 08th December 2021.
3. As informed by the unit ETP was started on 27/09/2021 for stabilization purpose in compliance to notified standards in MoEF&CC Notification G.S.R. 35(E) dated 14th January, 2016
4. The unit has valid Consent to Operate under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 (as amended) for 65 TPH boiler, which is valid up to 31.12.2023 and for two boilers of 120 TPH, which is valid up to 31.12.2024.
5. The unit has valid Consent to Operate under section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 (as amended) for discharge of effluent, which is valid up to 31.12.2023.
6. The unit has valid Authorization issued under the provisions of Hazardous and Other Wastes (Management and Trans-Boundary Movement) Rules, 2016 for storage and disposal of hazardous wastes valid up to 13.01.2023.
7. As per Daily Manufacturing Reports (DMRs) provided by the unit, the average actual crush rate (TCD) is 11975.56 TCD (for duration

of 20th November 07th December, 2021), against the consented capacity of 16000 TCD.

8. The unit is an integrated backend refinery sugar unit with 45 MW cogeneration power plant for in-house activity in sugar manufacturing process and the unit has valid Consent to Operate under section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 (as amended) for discharge of effluent, which is valid up to 31.12.2024.
9. Being a Sugar Refinery SO2 gas is not used in sugar manufacturing process, hence provision of separate Sulphur Recovery System (SRS) is not required.
10. The unit has installed Ion Exchange Resin Technology for decoloring of sugar syrups. The Ion Exchange resin gets saturated/exhausted after repeated usage and has to be regenerated. The unit re-generates exhausted resin using caustic brine solutions.
11. The unit has submitted the details about the Brine recovery system, which is as follows:

Overall Operating Parameters	
Feed capacity	7500 LPH
Operating hr	20 hr
Overall permeate	6775 LPH
Final Reject	725 LPH
Overall Recovery	90 % ± 2%

12. The unit has 03 boilers with capacity of 120 TPH (02 nos.) for co-gen and one boiler with capacity of 65 TPH for sugar manufacturing process with valid consent. 65 TPH boiler has stack height of 40m from ground level and two boilers of 120 TPH has stack height of 74 meter from ground level.
13. The unit has 02 DG sets having capacity of 1010 KVA each with acoustic enclosure.
14. As informed, the unit transfers used oil to third party (Ramky Enviro Engineers Ltd.) for its disposal on quarterly basis. The unit has provided membership certificate (UPWMP - KNP - HzW - CHW - TSDF - 2174) with Ramky Group, valid up to 23.02.2022.
15. The unit has Permitted Quantity (kg/day) of 10.0 kg/day of Used Oil under Schedule I (Category 5.1) and Wastes or residues containing oil under Schedule I (Category 5.2) of Hazardous and Other Wastes (Management and Trans- Boundary Movement) Rules, 2016 as per consent issued by UPPCB. The unit has not provided the details of quantity provided to Ramky Enviro Engineers Ltd.

16. The unit has not installed flow meter at mill house and boiling house to quantify the effluent generation separately. The effluent generated from the mill house and boiling house is being collected in a collection tank and further it goes to ETP inlet by gravity for further treatment.
17. The unit has setup environmental laboratory; however, the unit has not maintained the ETP log book for daily analysis of sugar effluent parameter.
18. As informed by the unit representative, the boiler ash is used to fill low laying area, however, the unit has not provided record of generated boiler ash.
19. It was observed that the unit has not maintained the record of Press mud generation, however, it was informed that press mud was provided to local farmers as organic manure.
20. The unit has two underground reservoirs (UGR) for hot water and cold-water recirculation system having capacities of 300 m^3 and 400 m^3 each.

14. The joint committee also observed that there were two ponds filled with waste water at the backside of the sugar mill. It is stated that the inspecting team collected the samples from the ponds for physio-chemical analysis. Thereafter, the observations of the joint committee alongwith the analysis results were extracted by the NGT in the impugned order dated 15.02.2022 which reads as follows:

21. The Joint Team has observed two ponding (Pond 1- large in size and Pond 2- small in size) filled with waste water at the back side of the press mud storage area. The team has collected the sample from pond for physico-chemical analysis. The analysis results of the collected samples are mentioned as below:

Table-1: Analysis results of Ponding behind press mud storage area

Sample Analysis	pH	COD	BOD	TSS	TDS	Cl^-	Color	$SO4^{2-}$	NO3 - N	NO2 - N	PO4 - P
Pond-1 (Large)	5.8	750	420	43	592	190	65	39	6.89	0.04	2.11
Pond-2 (Small)	5.1	1267	587	94	472	260	57	419	7.69	BDL	2.70

22. Analysis result of sample collected from pond-1 shows acidic pH-5.8, Color-65, high BOD-420 mg/l and COD- 750 mg/l, which indicate the characteristics of untreated effluent.

23. Analysis result of sample collected from pond-2 shows acidic pH-5.1, Color-57, high BOD-587 mg/l and COD-1267 mg/l, which reflect the characteristics of Refined Sugar effluent (pH-5.5- 6.5, Color- Light brown, BOD- 600-1000 mg/l, COD- 1500-2500 mg/l).

15. The joint committee also collected water samples from the sugar mill drain. The findings of the joint committee *qua* the samples collected from the sugar mill drain reads as under:

24. The team has also collected water samples from Sugar mill drain (name of the drain is Sugar mill drain), river Kali East i.e. upstream and downstream of the Sugar mill drain & Canal near sugar mill (Lat-29.269901, Long-77.743243). The analysis results are mentioned as below:

Table-2: Analysis results of Sugar mill Drain, River Kali East i.e. upstream and downstream of the Sugar mill drain & Canal near sugar mill

Sample Analysis	River Kali East u/s Sugar Mill drain	Sugar Mill drain	River Kali East d/s Sugar Mill drain	Canal near Sugar mill (29.269901 77.743243)
pH	6.5	6.8	6.6	7.9
COD (mg/l)	198	402	529	7.0
BOD (mg/l)	68	98	166	-
TSS (mg/l)	79	567	901	33
TDS (mg/l)	196	120	328	122
Cl^- (mg/l)	47	64	66	46
Color	30	46	43	BDL
$SO4^{2-}$(mg/l)	451	57	52	44
$NO3^{-N}$ (mg/l)	1.95	2.62	1.87	1.3
$NO2^{-N}$ (mg/l)	BDL	BDL	BDL	-
$PO4^{-P}$ (mg/l)	0.64	0.75	0.73	0.07
Conductivity (µmho/cm)	-	-	-	216
Total hardness as CaCO3 (mg/l)	-	-	-	303
Total Alkalinity as CaCO3 (mg/l)	-	-	-	322
Fluoride (mg/l)	-	-	-	0.3

25. Analysis result of sample collected from River Kali East u/s Sugar Mill drain shows pH- 6.5, COD- 198 mg/l, BOD-68 mg/l, TSS-79 mg/l, TDS- 196 mg/l, Chloride-47 mg/l, SO42-$_{-451}$ mg/l, NO3-$_{N}$-1.96 mg/l,

NO_2-N-BDL, PO_4-P-0.64 mg/l.

26. Analysis result of sample collected from River Kali East d/s Sugar Mill drain shows pH- 6.6, COD- 529 mg/l, BOD-166 mg/l, TSS-901 mg/l, TDS- 328 mg/l, Chloride-66 mg/l, SO_4^{2-}-52 mg/l, NO3-N-1.87 mg/l, NO2-N-BDL, PO4-P-0.73 mg/l indicate the effect of effluent carried by sugar mill drain i.e. pH- 6.8, COD- 402 mg/l, BOD-98 mg/l, TSS-567 mg/l, TDS-120 mg/l, Chloride-64 mg/l, SO_4^{2-}-46 mg/l, NO3-N-2.67 mg/l, NO2-N-BDL, PO4-P-0.75 mg/l.

27. The increase in BOD, COD and TSS in River Kali East at downstream of Sugar mill drain is due to turbulent flow conditions contributing in higher TSS, thereby BOD & COD increased. The entire flow in drain was sewage. Direct discharge or outlet into the Sugar mill drain was not evident during inspection.

28. Analysis result of samples collected from Canal near Sugar mill shows pH- 7.9, COD- 7.0 mg/l, TSS-33 mg/l, TDS- 122 mg/l, Chloride-46 mg/l, SO_4^{2-}-44 mg/l, NO_3-N-1.3 mg/l, PO_4-P-0.07 mg/l.

16. Similar analysis of water samples collected from borewells and handpumps of the sugar mill and nearby areas were made and results have been recorded. Likewise, analysis results of samples collected from the Sewage Treatment Plant and Effluent Treatment Plant have been recorded. Thereafter, the joint committee concluded in the following manner:

5.0 CONCLUSION

A. Compliance with the Standards:

1. The analysis results of sample collected from ETP outlet after filtration show pH - 7.5, COD- 15 mg/l, BOD - 05 mg/l, TSS - BDL, TDS - 272 mg/l, Oil & Grease - BDL & from lagoon show pH-7.6, COD- 04 mg/l, BOD - 01 mg/l, TSS - BDL, TDS - 532 mg/l, which are complying w.r.t. the Notified standards in MoEF&CC Notification G.S.R. 35 (E) dated 14th January, 2016.
2. However, it seems from the percentage reduction by two Aeration Tank (in series) in BOD-99.27%, COD- 97.73% & TSS-100% as compared from Primary Clarifier outlet to Secondary Clarifier-1, indicate dilution with fresh water by the unit.
3. MLSS value of 1674 mg/l in Aeration Tank-I of ETP indicates presence of less biomass against desired level (2500-3000 mg/l).
4. Also, Secondary Clarifier-2 outlet charac- teristics TSS - BDL and TDS - 136 mg/l (compared to Secondary Clarifier-1 outlet TDS 680 mg/l with same influent) indicate provisions of dilutions using fresh water in the outlet.
5. The effluent stored (Pond 1 & Pond 2) behind press mud is an illegal disposal of untreated effluent and the characteristics i.e.

BOD (420 mg/l and 587 mg/l) and COD (750 mg/l and 1267 mg/l) confirm stored/disposed effluent was untreated which is a violation of consent conditions issued by UPPCB.

B. Quality of treated effluents and utilisation as per protocol/agreement with the users/farmers:

1. The unit has stored treated effluent in lagoon after ETP filtration units, which was in semi filled condition. The analysis results of sample collected from lagoon are complying w.r.t. the Notified standards in MoEF&CC Notification G.S.R. 35(E) dated 14th January, 2016.
2. The unit has not provided any agreement for providing treated effluent for irrigation to users/farmers, however as informed by the unit representative, treated effluent used in the plant.

C. Effluents are reaching any drain leading to river/water body:

1. Provision of direct discharge or outlet point from unit into the sugar mill drain was not evident during inspection. The entire flow in Sugar mill drain was carrying sewage. The increase in BOD, COD and TSS in River Kali East at downstream of Sugar mill drain is due to turbulent flow conditions contributing in higher TSS, thereby BOD & COD increased.

D. Ground water quality be checked as per parameters relevant to the industry in question, particularly, fluoride etc.:

1. The analysis result of sample collected from 01 borewell located inside and 04 handpumps located outside the unit premises shows fluoride within permissible limit i.e. 1.5 mg/l as per BIS IS 10522:2012 Standards.
2. However, analysis results of samples collected from borewells within unit premises and all 04 Handpumps outside the unit premises are within permissible limit as per drinking water standard BIS IS 10500:2012 except Fe- 0.62mg/l, 4.78 mg/l, 0.46 mg/l from Handpump Sugar Mill near canal, Handpump Sugar Mill near drain and Handpump near Main gate of sugar mill respectively. Selenium (Se)- 0.02 mg/l is also detected which is beyond the permissible limit i.e. 0.01 mg/l as per drinking water standard BIS IS 10500:2012 in the sample collected from Handpump near Main gate of sugar mill.

E. Others:

1. The unit M/s Triveni Engineering and Industries Limited, Sugar Unit, Village Sheikhpura, Khatauli, Distt Muzaffarnagar is an integrated refinery sugar unit with 45 MW cogen and having consented capacity of 16000 TCD. As per Daily Manufacturing Reports (DMRs) provided by the unit, the average actual crush rate (TCD) is 11975.56 TCD (for duration of 20th November 07th

December, 2021).

2. The unit has valid Consent to Operate under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 (as amended) for 65 TPH boiler, which is valid up to 31.12.2023 and for two boilers of 120 TPH, which is valid up to 31.12.2024.
3. The unit has valid Consent to Operate under section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 (as amended) for discharge of effluent, which is valid up to 31.12.2023. The unit has valid Authorization issued under the provisions of Hazardous and Other Wastes (Management and Trans- Boundary Movement) Rules, 2016 for storage and disposal of hazardous wastes valid up to 13.01.2023.
4. The unit has a membership of TSDF with Ramky Enviro Engineers Ltd. as informed for disposal of used oil and wastes or residues containing oil on quarterly basis. Membership is valid up to 23.02.2022.
5. The unit has not installed flow meter at mill house and boiling house to quantify the effluent generation separately.
6. The unit has environmental laboratory for daily analysis of sugar effluent parameter, however, the unit has not maintained the ETP log book.
7. The unit has not provided record of generated Boiler ash.
8. The unit has not maintained the record of Press mud generation.
9. The unit has permission to abstract total 430 $m3_{/hr}$ of groundwater from four existing bore-wells as per No Objection Certificate (NOC) from Uttar Pradesh Ground Water Department (UPGWD), which is valid up to 13.01.2023.
10. The unit has Sewage Treatment Plant (STP) with capacity of 500 KLD for the treatment of domestic waste water generated from its residential colony/mill staff having population around 1000-1200 people. The analysis results (BOD-10 mg/l and COD -39 mg/l) of samples collected from STP inlet indicate dilution with fresh water by the unit.
11. The unit has installed flowmeters at the inlet & outlet of STP, however, flowmeters were found non-operational at the time of inspection.

17. On the aforesaid basis, the joint committee made the following recommendations:

6.0 RECOMMENDATIONS

1. The unit shall not discharge partially treated effluent into the drain and on land within or outside the unit premises.
2. The unit shall install flow meters at mill house and boiling house to

quantify the effluent generation separately.

3. The unit shall maintain the proper records for quantity of used oil & grease as per valid Authorization issued under the provisions of Hazardous and Other Wastes (Management and Trans-Boundary Movement) Rules, 2016 for storage and disposal of hazardous wastes.
4. The unit shall maintain proper record of Press Mud which is provided to the local farmers.
5. The unit shall maintain the ETP log book for daily analysis of raw and treated effluent parameters.
6. The unit shall maintain the proper record of boiler ash generation, sludge and their disposal.
7. The unit shall maintain adequate MLSS & MLVSS concentration in Aeration Tank-I & II while operating the ETP to ensure proper stabilization of ETP.
8. The unit shall make proper color coding of pipelines for water distribution network w.r.t. the defined coding of color for particular pipe carrying sugar effluent, treated effluent and fresh water.
9. The unit shall dismantle the Pond-1 and Pond-2 which contains waste water having characteristics of partially treated industrial effluent.
10. The unit shall restrict the use of Handpump near Main gate of sugar mill as the sample analysis shows Selenium (Se)- 0.02 mg/l which is beyond the permissible limit i.e. 0.01 mg/l as per drinking water standard BIS IS 10500.
11. The unit shall make flow meters operational installed at STP inlet and outlet.

18. The impugned order dated 15.02.2022 indicates that the said report was accepted by the NGT and held that appellant had violated the environmental norms. On that basis and following further report of the joint committee dated 10.08.2022, compensation amount of Rs. 18 crores at the rate of 2 percent of annual turnover was worked out and imposed on the appellant by the NGT *vide* the second impugned order dated 16.09.2022, further directing that the same may be deposited by the appellant with the District Magistrate, Muzaffarnagar within one month.

19. From a conjoint reading of the report of the joint committee and the impugned orders of the NGT, the following features are clearly discernable:

(i) NGT constituted a joint committee to carry out inspection of the sugar mill of the appellant *vis a vis* maintenance of pollution control measures and discharge of effluents.

(ii) This is an adhoc committee when the Water Act, more particularly Sections 21 and 22 thereof, clearly prescribe a statutory procedure to be followed while carrying out such inspection to examine pollution, if

any, or the extent of pollution caused by the project proponent and to suggest remedial measures.

(iii) The joint committee report dated 11.01.2022 as noticed above, is silent as to whether it has followed the procedure laid down in the aforesaid Act more particularly notice to the occupier or his agent and collection and sealing of samples in the presence of the occupier or his agent having his signature on the sealed containers.

(iv) NGT did not deem it appropriate to get the appellant impleaded as a party respondent in O.A. No. 71/2021 though the entire proceedings were directed against it.

(v) No opportunity was granted to the appellant to contest the report of the joint committee and to have its say. Thus, there is clear violation of the provisions contained in Section 19 of the National Green Tribunal Act, 2010.

(vi) It is the categorical stand of the appellant that the joint committee did not issue any notice to it before carrying out the inspection and it was not served with a copy of the report of the joint committee either.

(vii) NGT accepted the report of the joint committee without any adjudication on it.

(viii) Environmental compensation was quantified without any adjudication and without granting any opportunity of hearing to the appellant.

(ix) Environmental compensation was imposed on the appellant without giving any opportunity to the appellant to contest the reports of the joint committee and without giving any opportunity of hearing to the appellant.

20. Let us now refer to and examine some of the relevant case laws on the subject.

21. In *A.K. Kraipak* v. *Union of India*[1], a Constitution Bench of this Court considered the question as to whether principles of natural justice applied to administrative proceedings, after observing that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. This Court observed that horizon of natural justice is constantly expanding. Aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Rules of natural justice operate in areas not covered by any law validly made. Natural justice do not supplant the law of the land but supplement it. This Court answered the above question in the following manner:

> 20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The

concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (*1*) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (*2*) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George* v. *University of Kerala*, [1968 SCC OnLine SC 9] the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

22. As observed in *A.K. Kraipak* (supra), the rules of natural justice are constantly expanding. A Constitution Bench of this Court in *S.N. Mukherjee* v. *Union of India*[2] held that an administrative authority exercising quasi-judicial functions must record the reasons for its decision. An important consideration for holding so is that the reasons so recorded would enable the higher forum to effectively exercise appellate or supervisory powers. Further the requirement of recording reasons would guarantee consideration by the authority; introduce clarity in the decisions; and minimise chances of arbitrariness in decision making. Recording of reasons by an administrative authority serves a salutary purpose by excluding chances of arbitrariness and ensuring a degree of fairness in the decision making process. The Bench clarified that the requirement that reasons be recorded should govern the decisions of an administrative authority

exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. The Bench conclusively held that except in cases where the requirement has been dispensed with, expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

23. If this is true for an administrative authority exercising quasi-judicial functions, it is all the more true for a judicial tribunal vested with adjudicatory powers.

24. In *Municipal Corporation of Greater Mumbai* v. *Ankita Sinha*[3], this Court referred to its earlier decision involving the same parties whereby and whereunder the question as to whether National Green Tribunal (NGT) can exercise *suo motu* jurisdiction or initiate *suo motu* action was answered in the affirmative. Thereafter, this Court held that even if NGT intends to initiate *suo motu* action, it must provide an opportunity of hearing to persons likely to be affected before passing any adverse order against them. In that context, this Court held that the impugned *ex-parte* preemptory order passed by the NGT without giving opportunity to the person likely to be affected by such order be treated as effaced from the record. This Court made it amply clear that NGT is obliged to hear the party before issuing any adverse directions which is likely to be directly affected by it, including an action initiated *suo motu.*

25. This Court in *T. Takano* v. *Securities and Exchange Board of India*[4] examined the issue of disclosure of all relevant materials to the parties in the context of disclosure of investigative report submitted to the Securities and Exchange Board of India under Regulation 9 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 to the noticee to whom the show cause was issued and held that possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also in determining the veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter arguments related to the information.

25.1. Elaborating further, this Court held that principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgment or order it passes. The purpose of disclosure of information is not merely individualistic that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Therefore, all relevant

materials must be disclosed; otherwise it would be fundamentally contrary to the principles of natural justice. In the circumstances, this Court concluded as under:

50.1. A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication.

50.2. An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is *relevant* to and has a *nexus* to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

50.3. Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.

26. *State Bank of India* v. *Rajesh Agarwal*[5] is a case where this Court once again reiterated that principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. This Court held as under:

36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence : (*i*) *nemo judex in causa sua*, which means that no person should be a Judge in their own cause; and (*ii*) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.

26.1. Further, this Court held in clear terms that every order or proceeding which involves civil consequences or adversely affects a citizen should be in accordance with the principles of natural justice.

27. In *Kantha Vibhag Yuva Koli Samaj Parivartan Trust* v. *State of Gujarat*[6], this Court dealt with an appeal arising out of an order passed by the NGT dismissing an original application alleging environmental degradation and seeking restitution of the environment. This Court

observed that it is important to differentiate expert committees which are set up by the courts/tribunals from those set up by the government in exercise of executive powers or under a particular statute and held as follows:

> 17. It is first important to differentiate Expert Committees which are set up by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before the courts when decisions are taken solely based upon them. The precedents of this Court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fide. On the other hand, the courts/tribunals themselves set up Expert Committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these Expert Committees does not substitute the adjudicatory role of the court or tribunal. The role of an Expert Committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all the parties concerned. Allowing for objections to be raised and considered makes the process fair and participatory for all the stakeholders.

27.1. This Court also referred to an earlier decision in the case of *Sanghar Zuber Ismail* v. *Union of India*[7] wherein it was held that constitution of an expert committee does not absolve NGT of its duty to adjudicate. The adjudicatory functions of NGT cannot be assigned to committees, even expert committees. The decisions have to be that of NGT. NGT has been constituted as an expert adjudicatory authority under the statute. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the NGT. Adverting to the facts of that case, this Court held that NGT had abdicated its jurisdiction by entrusting judicial function to an administrative expert committee. An expert committee may be able to assist NGT, for instance, by carrying out a fact finding exercise but the adjudication has to be by NGT.

28. This Court in *Grasim Industries Limited* v. *State of Madhya Pradesh*[8] noticed that NGT had followed a similar procedure as in the present case.

The procedure followed by NGT has been summed up in the following manner:

> 4. After the NGT entertained the O.A. on the basis of the letter addressed by Respondent No. 1, it initially directed the plant of the appellant to be examined by the State Pollution Control Board. After the receipt of the report of the State Pollution Control Board, the Court appointed a Joint Committee to give its report. The said Joint Committee made certain recommendations and the NGT passed the impugned order on the basis of the said recommendations.
>
> 5. The material placed on record would also reveal that the appellant herein was not made a party to the proceedings before the learned NGT or before the Joint Committee. Though an application for impleadment was filed by the appellant, the same was rejected by the learned NGT.
>
> 6. It further appears that even the Joint Committee appointed by the NGT neither gave any notice to the appellant nor an opportunity was given of being heard. Though, this objection was specifically taken by the appellant, the NGT observed "We asked the learned Counsel whether the stand of the unit is that the violations found never existed or whether they existed but have been remedied. His answer is later. It is patent that there were violations.

28.1. It was in the above context that this Court held that the procedure followed by NGT was totally unknown to the settled principles of natural justice. Neither was any notice given by the joint committee to the appellant before giving an adverse report against the appellant nor the NGT permitted impleadment of the appellant as a party respondent. NGT could not have proceeded further with the matter even at the initial stage without impleading the appellant as a party respondent. Approach adopted by the NGT clearly smacks of condemning a person unheard. NGT cannot outsource an opinion and base its decision on such opinion.

29. In *Delhi Pollution Control Committee* v. *Lodhi Property Company Limited*[9], this Court examined the challenge of Delhi Pollution Control Board to a judgment of the Delhi High Court whereby it was held that Delhi Pollution Control Board is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 on the ground that such an action amounts to imposition of penalty provided for in Chapters VI and VII of the aforesaid Acts and, as such, the procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage. The core question in that case was whether the regulatory boards in exercise of powers under Section 33A of the Water Act and Section 31A of the Air Act can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante*

measure towards potential environmental damage? The above question was answered in the affirmative by holding that pollution control boards can impose and collect as restitutionary and compensatory damages, fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage in exercise of the aforesaid powers. However, what is relevant for our present consideration is the following declaration:

> 39. * * * * *
>
> (c) it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an *ex-ante* measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.

30. Having surveyed the relevant case law on the subject, let us revert back to the present case. From the conspectus of facts and law, it is clearly evident that the impugned orders are in complete violation of the procedures laid down in the Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986, more particularly Sections 21 and 22 of the Water Act and the National Green Tribunal Act, 2010, including Section 19 thereof. It is crystal clear that the impugned decisions which entail adverse civil consequences upon the appellant were passed without following the due procedure laid down under the statute as well as the elementary principles of natural justice. We, therefore, have no hesitation in declaring such orders to be illegal and null and void.

31. NGT exercises judicial functions. Therefore, it is all the more necessary for the NGT to adhere to a fair procedure which is statutorily laid down of which principles of natural justice are an inalienable part. Rigor of Section 19(1) of the National Green Tribunal Act, 2010 is *qua* the procedure to be adopted by the NGT in conducting its proceedings. It cannot be stretched to abandon the statutory procedure laid down under Sections 21 and 22 of the Water Act and by outsourcing investigation to administrative committees by overlooking the statutory provisions and basing its decisions on the recommendation of such administrative committee. This is not within the remit of NGT.

32. As we have noticed above, this is a classic case where in the quest for doing justice, NGT has ended up doing just the reverse.

33. Ordinarily, in a case where there is violation of the principles of natural justice, parties are relegated to the adjudicatory forum to re-do the exercise after following the due process. But in this case, the entire exercise has been vitiated because of non-conforming to the laid down procedure contemplated under Sections 21 and 22 of the Water (Prevention and Control of Pollution) Act, 1974. In such circumstances, relegating the parties back to the NGT in our considered opinion would

serve no useful purpose. However, we clarify that it will always be open to the UPPCB to carry out inspection and take remedial measures *qua* the sugar mill of the appellant by following the procedure laid down under the Water Act and after complying with the due process statutorily laid down thereunder, including by adhering to the principles of natural justice.

34. Accordingly and in the light of the above, the impugned orders dated 15.02.2022 and 16.09.2022 passed by the NGT in O.A. No. 71/2021 are hereby set aside. Consequently, the civil appeals are allowed. However, there shall be no order as to cost.

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[1] (1969) 2 SCC 262

[2] (1990) 4 SCC 594

[3] 2021 SCC OnLine SC 1298

[4] (2022) 8 SCC 162

[5] (2023) 6 SCC 1

[6] (2023) 13 SCC 525

[7] (2021) 17 SCC 827

[8] 2024 SCC OnLine SC 3538

[9] 2025 SCC OnLine SC 1601

2023 SCC OnLine NGT 2104

In the National Green Tribunal[†]

(Through Physical Hearing With Hybrid Mode)

(BEFORE B. AMIT STHALEKAR, MEMBER (JUDICIAL) AND ARUN KUMAR VERMA, MEMBER (EXPERT))

Majhaulia Sugar Industries Private Limited, having its registered address at Industry, House, 15th Floor, 10, Camac Street, Kolkata-700017 & having its Mill/Plant at P.O.-Majhaulia, District-West Champaran-845454 … Appellant(s);

Versus

Chairman, Bihar State Pollution Control Board having its address at Pariesh Bhawan, N.S.B.-2, Patliputra, Industrial Area, P.O.-Sadakat Ashram, Patna-800010 and Others … Respondent(s).

APPEAL NO.i1/2023/EZ

Decided on March 31, 2023

Advocates who appeared in this case :

For Appellant(s): Mr. Kallol Basu, Adv. a/w Ms. Sneha Singh, Adv. (in Virtual Mode)

For Respondent(s): Ms. Amrita Pandey, Adv. for BSPCB (in Virtual Mode)

ORDER

1. Counter-affidavit dated 24.03.2023 has been filed by the Respondent Nos. 1 & 2, Bihar State Pollution Control Board.

2. Affidavit-in-reply dated 31.03.2023 has been filed by Appellant.

3. The Appellant in the present Appeal is seeking quashing of the order dated 07.12.2022 issued by the Bihar State Pollution Control Board, whereby the Appellant Unit has been directed to deposit Environmental Compensation of Rs. 58,80,000/- (Rupees Fifty Eight Lakhs Eighty Thousand only).

4. The case of the Appellant, *inter-alia,* is that though the impugned order is based upon the water samples collected by the Bihar State Pollution Control Board from the Unit of the Appellant but prior to collection of the samples, notice as required under Section 21 of the Water (Prevention and Control of Pollution) Act, 1974, has not been given to him.

5. Along with the counter-affidavit of the Respondent Nos. 1&2,

Bihar State Pollution Control Board, dated 24.03.2023, an Inspection Report of an inspection carried out on 30.05.2022 has been filed wherein it is stated that during inspection the Appellant Unit was found closed, however, the plant and equipment were being washed and the remaining effluents were being mixed with domestic sewage and were being discharged through Municipal Nalla. Samples of effluents were collected from meeting points and were sent for analysis to the State Board's Laboratory and the same were found to be beyond the prescribed standards. It is also stated that Environmental Compensation of Rs. 58,80,000/- (Rupees Fifty Eight Lakhs Eighty Thousand only) has been computed against the Appellant Unit which has been challenged in the present Appeal.

6. Learned Counsel for the Appellant submitted that at the time of inspection and taking of water samples, the Appellant was never informed and, in fact, the provisions of Section 21 sub-sections (2), (3), (4) & (5) of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Water Act, 1974') were never complied with by the State Board. Section 21 of the Water Act, 1974 reads as under :—

> *"21. Power to take samples of effluents and procedure to be followed in connection therewith.—(1) A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.*
>
> (2) *The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in a legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.*
>
> (3) *Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub -section (1), the person taking the sample shall -*
>
> (a) *serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;*
>
> (b) *in the presence of the occupier or his agent, divide the sample into two parts;*
>
> (c) *cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;*

(d) *send one container forthwith,--*

(i) *in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or recognised by the Central Board under section 16; and*

(ii) *in any other case, to the laboratory established or recognised by the State Board under section 17;*

(e) *on the request of the occupier or his agent, send the second container;-*

(i) *in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or specified under subsection (1) of section 51; and*

(ii) *in any other case, to the laboratory established or specified under sub-section (1) of section 52*

[(4) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3) and the occupier or his agent wilfully absents himself, then,--

(a) *the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (e) of sub-section (3) and such person shall inform the Government analyst appointed under subsection (1) or sub-section (2), as the case may be, of section 53, in writing about the wilful absence of the occupier or his agent;*

(b) *the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:*

Provided that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.]

(5) *When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking*

the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3).”

7. We have seen the Inspection Report and we find that there is no mention therein that the mandatory provisions of sub-sections (3), (4) & (5) of Section 21 of the Water Act, 1974, have been complied with.

8. In this view of the matter, we find the impugned assessment of Environmental Compensation of Rs. 58,80,000/- (Rupees Fifty Eight Lakhs Eighty Thousand only) against the Appellant Unit to be absolutely illegal and arbitrary and in violation of the provisions of Section 21 of the Water Act, 1974.

9. We accordingly quash the impugned order dated 07.12.2022. However, it will be open for the Bihar State Pollution Control Board to proceed against the Appellant Unit for taking water samples and determination of Environmental Compensation in accordance with law.

10. In view of above, the Appeal No. 11/2023/EZ is accordingly disposed of.

11. I.As. if any, stand disposed of accordingly.

12. There shall be no order as to costs.

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† Eastern Zone Bench, Kolkata

1985 SCC OnLine Del 263 : AIR 1986 Del 152 : (1986) 29 DLT 36 (SN) : (1987) 1 Ch LR 31

In the High Court of Delhi

(Single Bench)

(BEFORE H.C. GOEL, J.)

M/s. Delhi Bottling Co. Pvt. Ltd, New Delhi and another … Petitioners;

versus

Central Board for the Prevention and Control of Water Pollution, New Delhi … Respondent.

Crl. Misc. (Main) No. 867 of 1984

Decided on August 7, 1985*

ORDER

M/s. Delhi Bottling Co. Pvt. Ltd. (for short 'the Company'), petitioner No. 1, has been carrying on the business of preparation of soft drinks under the trade names Gold Spot, Limca, Thums Up, Rimzim

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and Soda Water etc. at their factory premises No. 60, Shivaji Marg, New Delhi. They are discharging trade effluents which ultimately fall in the stream i.e. river Yamuna. Shri S.K. Arya, petitioner No. 2, is the Plant Manager of the Company. The Company duly obtained consent order under the provisions of Ss. 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Act'). A complaint under S. 33(1) of the Act was filed by the Central Board for the Prevention and Control of Water Pollution, respondents, against the petitioners. It was alleged that the Company has neither put up the treatment plant, nor has started any preliminary step in that regard. It was further alleged that a sample of the trade effluents of the Company was lifted by the officials of the Board on May 16, 1984 in the presence of Mr. D.L. Khosla, a representative of the Company, and the sample on analysis has been found as not conforming to the parameters of the consent order of the Company. It was prayed that the Company be restrained from causing pollution by discharge of trade effluents till the company sets up the required treatment plant and conforms to the quality of trade effluents according to the parameters as provided in the consent order. Shri Naipal Singh, Metropolitan Magistrate, Delhi, after obtaining

the reply of the petitioners to the complaint of the respondents and after hearing the parties, passed the impugned order dt. Aug. 8, 1984 accepting the application of the respondents and restraining the petitioners from causing pollution of the stream by discharging the trade effluents till the required treatment plant is set up and conforming the quality of trade effluents according to the standards prescribed by the Board in its consent order as renewed on November 26, 1981. Feeling aggrieved by this order of the learned Metropolitan Magistrate the petitioners have filed this petition under S. 482, Cr. P.C.

2. Mr. R. Mohan, learned counsel for the respondents, submitted that for passing an order under S. 33 of the Act there is no need that the samples of the effluents must be lifted from the factory premises and got analysed as per the provisions of S. 21 of the Act. As such, it was not necessary for the officials of the Board to divide the sample lifted into two parts and to get the same analysed from the laboratory established by the Delhi Administration as per the provisions of S. 21 (4) of the Act. The learned Magistrate has not dealt with this aspect of the matter in his impugned order. However, I think that it is necessary to go into this question for a proper decision of the case. Mr. Mohan submitted that as per S. 33 of the Act the Board has the power to lift a sample on a ground other than the one that the water in the stream is polluted by reason of disposal of any matter therein or of any likely disposal of any matter therein. It is submitted that that being so and S. 21 being confined to the lifting of samples only when the stream is likely to be polluted by reason of disposal of any matter therein or of any likely disposal of any matter therein, provisions of S. 21 do not come into operation for lifting of a sample for the purposes of getting an order under S. 33 of the Act. I do not find any force in this submission. The Scheme of the Act shows that S. 21 is a provision of general application governing the matter of lifting of samples in all cases including the cases for the purpose of obtaining an order under S. 33 of the Act. The heading of S. 21 is "Powers to take samples of effluents and procedure to be followed in connection therewith." S. 21 (1) incorporates the powers of the State Board or of the officers of the State Board with regard to the lifting of samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well. Sub-s.(2) of S. 21 states that the result of any analysis of a sample of any sewage or trade effluent taken under sub-s. (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-ss.(3), (4) and (5) are complied with. The proceedings under S. 33 of the Act are obviously legal proceedings under the Act. It is thus clear that the sample must be lifted in accordance with the provisions of S. 21 of the Act when only its

analysis could be admissible in evidence in the proceedings under S. 33 of the Act. Further Ss. 32 and 33 are the only two provisions of the Act where under samples may be lifted by the Board. Whereas S. 32 provides for emergent cases, S. 33 is the normal provision empowering the Board to make applications to courts for restraining apprehended pollution of water in streams or wells. So to say that for taking action under S. 33 which is a normal provision in which the

lifting of samples is involved that the provisions of S. 21 are not operative is wholly fallacious.

3. We have now to see as to how far the learned Magistrate was right in coming to the conclusion that though the provisions of S. 21 were applicable to the case, yet the sample was not required to be divided into two parts and got analysed as per the provisions of sub-s.(5)of S. 21 because in his view no appearance was put in on behalf of the Company before the officials of the Board at the time of the taking of the sample by them. I may say at the very outset that this conclusion of the learned Magistrate is wholly erroneous. The petitioners in para 2 of the preliminary objections and para 17 of their reply to the complaint clearly stated that the sample was not divided by the officials of the Board into two parts and no part thereof was given to the Company's representative in spite of his request in that behalf. The Respondent-Board filed a rejoinder to this reply of the petitioners. They, however, did not controvert these allegations of the petitioners therein. The Board in fact in their rejoinder did not reply to the allegations of the petitioners in their reply parawise and the Board nowhere controverted the said allegations of the petitioners. No affidavit was filed by either side before the learned Magistrate in support of their respective claims. In such a situation the aforesaid allegations of the petitioners had to be taken as not controverted and thus admitted. The learned Magistrate came to the conclusion that the copy of the notice for the inspection by the officials of the Board was duly served on Shri S.K. Arya, petitioner No. 2. He, however, took the view that no appearance was put in on behalf of the petitioners before the officials of the Board at the time when they lifted the sample. This observation of the learned Magistrate is wholly against the true facts. The petitioners filed a photo copy of form No. 12 which was available on the record of the learned Magistrate. At the foot of this document there is a nothing "Received Form 12" and which purports to be signed by one D.L. Khosla on the same date i.e. May 6, 1984, the date on which the samples were lifted.

This receipt was given by Shri Khosla in token of the Boards' having delivered a copy of Form 12 to him who was the agent of the petitioners present before the officials. The learned Magistrate did not deal with the matter on the basis of the aforesaid allegations which are in the nature of the pleadings of the parties. The learned Magistrate observed that as no presence was put in on behalf of the Company, so the question of there being any request by the Company for dividing the samples into two parts did not arise. This conclusion of the learned Magistrate is not sustainable in view of my above finding that Shri Khosla was duly present at the time when the sample was lifted. Further in view of the said pleadings of the parties it has to be taken that a demand was also made by the said representative to the officials of the board to divide the sample into two parts and to get the same analysed in accordance with S. 21(5) of the Act, but that request was not acceded to. I accordingly hold that the officials of the Board were not justified in getting the sample analysed from a laboratory only recognised by the Board instead of getting the same analysed from the laboratory of the Delhi Administration and without complying with the requirements of sub-s.(5) of S. 21 of the Act. That being so, the conclusion that the petitioners were discharging effluents in the stream which were likely to cause pollution is not sustainable. Consequently the impugned order is bad and is liable to be set aside.

4. The learned Magistrate also took note of the fact that the petitioners had not erected any treatment plant as per Cl. 5 of the consent order. Mr. Sarin, learned Counsel for the petitioners, submitted that there was no absolute obligation on the part of the petitioners to erect a separate treatment plant so long as they were not discharging the effluents contrary to the parameters as provided in the consent order. Be that as it may, the true interpretation of the impugned order is that a restraint order has been passed against the petitioners restraining them from discharging their effluents in the stream which do not conform to the quality as per the standards prescribed by the Board in its consent order and thereby causing pollution of the stream. We cannot read in between the order that a direction has been given to the petitioners to erect a treatment plant. Such a direction is also perhaps not envisaged by the provisions of S. 33(1) of the Act. S. 33 (1) only provides for the passing of a restraint order by the court against the Company for ensuring the stoppage of apprehended pollution of water

in the stream in which the trade effluents of the Company are

discharged. I, therefore, need not go into the question as to whether the petitioners' non-erection of a treatment plant was such an act on which the impugned restraint order was justified. The restraint order is also not based on that footing. For the non-erection of the treatment plant the Board has the power to launch prosecution against the defaulting Company under the provisions of S. 41 of the Act.

5. In conclusion I accept the petition and set aside the impugned order of the learned Magistrate.

Petition allowed.

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* Against order of Naipal Singh, Metropolitan Magistrate, Tis Hazari Courts, Delhi, D/-8-8-1984.

2025 SCC OnLine SC 1601

In the Supreme Court of India

(BEFORE P.S. NARASIMHA AND MANOJ MISRA, JJ.)

Civil Appeal No(s). 757-760 of 2013

Delhi Pollution Control Committee … Appellant(s);

Versus

Lodhi Property Co. Ltd. Etc. … Respondent(s).

With

Civil Appeal No(s). 1977-2011 of 2013

Civil Appeal No(s). 757-760 of 2013 and Civil Appeal No(s). 1977-2011 of 2013

Decided on August 4, 2025

Advocates who appeared in this case :

Mr. Pradeep Misra, AOR, Mr. Daleep Dhyani, Adv., Mr. Dinesh Jindal, Adv., Mr. Suraj Singh, Adv., Mr. Ninad Laud, Adv.(A.C.), Mr. Ivo M.S. D'Costa, Adv., Mr. Rashika Narain, Adv. and Ms. Ishani Shekhar, Adv.for the Appellant(s);

Mr. Pinaki Misra, Sr. Adv., Mr. Pravin Bahadur, Adv. Mr. Kishan Rawat, Adv. Mr. Rajan Narain, AOR, Mr. S. S. Shroff, AOR Mr. Ajit Warrier, Adv. Mr. Angad Kochhar, Adv. Ms. Sakshi Agarwal, Adv., Mr. Mohit D. Ram, AOR Ms. Nayan Gupta, Adv., Mrs. Priya Puri, AOR, Mr. Navin Prakash, AOR and Mr. Umesh Kumar Khaitan, AOR, for the Respondent(s).

JUDGMENT

Contents

1. Introduction.

1. The *Delhi Pollution Control Committee (DPCC)*[1] is in appeal against the judgment of the Division Bench of the High Court holding that it is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981[2] on the ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of the respective Acts, and as such, procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage.

2. Having considered the principles that govern Indian environmental laws, we have held that the environmental regulators, the Pollution Control Boards exercising powers under the Water and Air Acts, can impose and collect restitutionary or compensatory damages in the form of fixed sum of monies or require furnishing of bank guarantees as an *ex-ante* measure to prevent potential environmental damage. These powers are incidental and ancillary to the empowerment under Sections 33A and 31A of the Water and Air Acts. At the same time, we have directed that the powers must be exercised as per procedure laid down by subordinate legislation incorporating necessary principles of natural justice, transparency and certainty.

2. Facts.

3. It is the case of the Delhi Pollution Control Committee that pursuant to the directions of the Ministry of Environment, Forest and Climate Change (MoEFCC) to take appropriate action against certain entities operating in violation of the environmental norms, show cause notices were issued for violation of Section 25 of the Water Act and Sections 21 and 22 of the Air Act. These entities were either residential complexes, commercial complexes or shopping malls. The show cause notices were issued on the ground that they proceeded with construction and in fact, were operating without obtaining the mandatory "consent to establish" and "consent to operate" under Section 25 of the Water Act and Section 21 of the Air Act. The show cause notices were challenged by way of 38 writ petitions before the Delhi High Court. The challenge culminated in the judgment of a single judge dated 30.09.2010 in the case of *Splendor Landbase Ltd.* v. *DPCC*[3]. The learned single judge considered the question as to whether a State Board can levy environmental damages in the form of fixed sums of money or require an entity to furnish a bank guarantee as a condition for grant of consent under Section 33A of Water Act and/or Section 31A of Air Act. Similar writ petitions were considered and decided by another single judge bench in *Bharti Realty Ltd.* v. *DPCC* and *Anush Finlease and Construction* v. *DPCC* on 20.07.2011 and

15.09.2011 and were disposed of in terms of the decision in *Splendor Landbase Ltd.* v. *DPCC*. The reasoning adopted in the judgment and orders passed by the Single Judges are as follows.

3. Single Judge's Judgment and Orders.

4. In *Splendor Landbase Ltd.* v. *DPCC*[4], the ld. single judge by his judgment dated 30.09.2010 dealt with two major issues - firstly, whether proprietors of properties over 20,000 square meters are required to obtain *consent to establish* and *consent to operate* under Water Act and Air Act independently, despite obtaining EIA Clearance from the Ministry; and secondly, whether Boards can levy penalties, fines, environmental damages in form of fixed sums of monies or call for bank guaranties as a condition to grant consent under Water and Air Acts? While the first question was answered in the affirmative, the second was answered in the negative.

4.1. It was held that the power to levy penalty is in the nature of a penal power and as such a penalty cannot be imposed without there being an enabling statutory power. For this reason, the single judge held that Board has no power to levy penalty or damage, even on the basis of the general powers under Sections 31A or 33A of the Acts. The learned Judge criticized the monetary demand as a pre-condition for grant of consent under the Acts on the ground that it has no statutory backing.

4.2. In the other batch of cases i.e. in *Bharti Realty Ltd.* v. *DPCC* and *Anush Finlease and Construction Ltd.* v. *DPCC*, decided on 12.07.2011 and 15.09.2011, the learned Single Judge was constrained to enquire into the matter in detail as writ appeals against the judgment in *Splendor* were already pending before a Division Bench. Therefore, the Single Judge allowed the writ petitions following the decision in *Splendor* and holding that the Board has no power to impose and collect compensatory damages. In these cases, the learned Judge also directed refund of the amounts collected. However, no interest was granted to the respondents as they chose to comply with the demand instead of challenging the same at the relevant point in time.

4. Impugned Order of the Division Bench.

5. The decisions of the single judges were challenged by the appellant before the Division Bench of the High Court. By the judgment impugned before us, the Division Bench upheld the findings of the Single Judge in *Splendor* that the power to issue directions under Sections 33A and 31A under the two Acts does not confer the power to levy 'penalty'. The High Court further observed that under Chapter VII and Chapter VI of the Water and Air Acts penalties can be levied only by courts and that too after taking cognizance of offences specified under the two Acts. Provided that the procedure so prescribed under

the statute has to be followed mandatorily, the Division Bench held that the appellant would not be entitled to impose compensation or direct deposit of bank guarantees. The relevant portion of the Division Bench of the High Court is as follows-

> *"37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that, the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent jurisdiction and no more.*
>
> *40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application, seeking prior consent and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping, commercial complexes and pertaining to air pollution, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction,*

which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as (1997) 5 SCC 536 Mafatlal Industries Ltd. *v.* UOI, *under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld."*

5. Submissions.

6. Mr. Pradeep Mishra appearing on behalf of the appellant DPCC submitted that the High Court erred in holding that the State Boards are not empowered to impose environmental damages under Sections 33A and 31A of Water and Air Acts. He has argued that the application of the principle of *Polluter Pays* is distinct from the requirement of authority of law to impose tax or penalty.

7. On behalf of the respondents, Mr. Ninad Laud has submitted that as per broad scheme of the Acts and also the statement of objects and reasons, State Boards are empowered to act on their own while enforcing Sections 25 and 26 and also while issuing directions under Sections 33A and 31A. However, when faced with non-compliances, recourse to judicial process is contemplated under Sections 49 and 43 of Water and Air Acts respectively. Further, neither Rule 34 of Water (Prevention & Control of Pollution) Rules, 1975 nor Rule 20A of Air (Prevention & Control of Pollution) Rules, 1983, while providing a mechanism to administer Section 33A and Section 31A, contemplate monetary penalties. Countering the submission of Mr. Pradeep Misra on the principle of *Polluter Pays* to encourage reading the power to impose and collect environmental damages under Sections 33A and 31A of the respective Acts, he would submit such an approach is impermissible as the said power is specifically and separately provided under Chapters VII and VI therein. Relying on the decision of this Court in *MC Mehta* v.

Kamal Nath[5], he would submit, after considering the scheme of penal provisions under Water Act, Air Act and Environment (Protection) Act, 1986, the Supreme Court held that penalties under the Acts befall a person only after finding of guilt upon trial by a court of law. Referring to the legitimacy of State Board's action demanding bank guarantees to secure compliance with conditions, he would submit that no penalty, other than that contemplated in the statute or statutory scheme can be imposed.[6] We have also heard Mr. Pinaki Misra, Senior Advocate and other learned counsel and they have strongly supported the decision of the Division Bench.

7.1. Counsel for M/s Laxmi Buildtech Pvt. Ltd.[7] has submitted that they have neither violated nor acted in breach of any provision of environmental laws and therefore they cannot be subjected to any penalty or criminal prosecution. Counsel for other respondents further submitted that they have deemed consent as well as EIA clearance from the Ministry. They have also submitted that imposition and collection of damages by the State Boards is outside the powers vested in them under the Water and Air Acts.

7.2. Counsel for M/s Bharti Realty Ltd has submitted that it is a settled principle of law that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and no other.[8] This principle, according to the learned counsel, squarely applies to the present case as Chapter VII and Chapter VI of the Water and Air Acts have a prescribed procedure to be followed before imposing penalties. It is further argued that the role of any State Board is in the nature of a complainant and not that of an adjudicatory authority. In this vein, it is submitted that any other interpretation would render the chapter on 'Penalties and Procedures' nugatory and otiose. It is also submitted that the power to give directions under Sections 33A and 31A of the Water and Air Acts is "subject to provisions of this Act". Written submissions also refer to the recent amendments to the Water and Air Acts, empowering an Adjudicating Officer, not below the rank of Joint Secretary of Government of India or Secretary to State Government, for imposing penalties for contravention of provisions of the Acts.

6. Issue.

8. The core question in these appeals is - whether the regulatory boards can, in exercise of powers under Section 33A of the Water Act and Section 31A of the Air Act, impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage?

7. Existing Legal Regime for Pollution Control in India.

9. Under the Water Act and the Air Act, the State Boards have a broad statutory mandate to prevent, control and abate water pollution and air pollution. Under Section 17 of the Water Act, the State Boards are to shoulder enormous responsibilities and their functions are reproduced herein for ready reference -

> ***"Section 17. Functions of State Board*** *- (1) Subject to the provisions of this Act, the functions of a State Board shall be—*
>
> *(a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;*
>
> *(b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;*
>
> *(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;*
>
> *(d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;*
>
> *(e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;*
>
> *(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;*
>
> *(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;*
>
> *(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;*
>
> *(i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;*
>
> *(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not*

provide for major part of the year the minimum degree of dilution;

(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(l) to make, vary or revoke any order—

(i) for the prevention, control or abatement of discharges of waste into streams or wells;

(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or adopt such remedial measures as are necessary to prevent, control or abate water pollution;

(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

(n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;

(o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.

(2) The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents."

10. Section 17 of the Air Act[9], substantially similar to its equivalent under the Water Act, also indicates the crucial responsibilities of the State Boards in discharge of their mandate. Chapter V of the Water Act and Chapter IV of the Air Act include provisions that prescribe the regulatory powers of the State Boards. These powers include the power to issue, modify or withdraw consent[10], power to obtain information[11], power of entry and inspection[12] and power to take samples[13].

8. Insertion of Sections 33A & 31A in Water and Air Acts.

11. In 1988, both Acts were amended. Notably, through amendments the State Boards were further empowered to give directions under Section 33A of the Water Act and Section 31A[14] of the Air Act. These two provisions are identically worded. Section 33A of the Water Act is as under;

> ***"Section 33A. Power to give directions.—*** *Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*
>
> *Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*
>
> *(a) the closure, prohibition or regulation of any industry, operation or process; or*
>
> *(b) the stoppage or regulation of supply of electricity, water or any other service."*

12. The directions contemplated under Sections 33A and 31A of the Water and Air Acts must be in furtherance of the powers and functions of the Boards and they must be in writing. These provisions, declares that the power to issue directions will include the power to direct closure, prohibition or regulation of any industry, operation or process. Further, this power extends to directing the stoppage or regulation of supply of electricity, water or any other service. The power to give directions has been worded broadly, and it allows the Boards significant flexibility in deciding the nature of directions. The legislative intention of granting these powers through the 1988 amendment can be inferred from the Statement of Objects and Reasons of the Water Act, which reads as follows -

> *"2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties….*
>
> *3. The Bill, inter alia, seeks to make the following amendments in the Act, namely:—*
>
> *….*
>
> *(iv) in order to effectively prevent water pollution, the penal provisions of the Act are proposed to be made stricter and bring them at par with the punishments prescribed in the Air (Prevention and Control of Pollution) Act, 1981 as amended by Act 47 of 1987;*
>
> *….*

(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity;"

13. Similar objective is expressed for the amendment introduced in the Air Act.[15]

14. An appeal against directions issued under Section 33A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33B, introduced in 2010[16]. Unlike the Water Act there is no specific Appeal provision against directions issued under Section 31A of the Air Act. This asymmetry must be addressed legislatively.

15. Offences and penalties under the two Acts, and the related procedures, are covered in Chapter VII of the Water Act and Chapter VI of the Air Act. These chapters have undergone significant and substantial amendments. Prior to the amendments, the two Acts stipulated penalties in the form of imprisonment, monetary fine or both for offences under the statute. Courts could only take cognizance of an offence if a complaint was filed by a Board or any officer authorized by it, or by any person who had given notice of the alleged offence and of his intention to make a complaint. No court inferior to that of a Metropolitan Magistrate or a Judicial magistrate of the first class can try an offence punishable under the two Acts. Be that as it may, for the present purpose we have to examine and interpret Sections 33A and 31A of the Water and Air Acts.

9. Interpretation of and for Environmental Institutions.

16. Our constitutionalism bears the hallmark of an expansive interpretation of fundamental rights. But such creative expansion is only a job half done if the depth of the remedies, consequent upon infringement, remain shallow. In other words, remedial jurisprudence must keep pace with expanding rights and regulatory challenges. It is not sufficient that courts adopt injunctory, mandatory and compensatory remedies, but our regulators also must be empowered in that regard. However, the legislative grammar must be elastic for us to infuse the regulators with power to fashion different remedies. This infusion must also be tampered with the necessary guidelines and parameters of exercise of remedial powers, failing which such infusion would aid arbitrary use. Our firm view is that remedial powers or restitutionary directives are a necessary concomitant of both the fundamental rights of citizens who suffer environmental wrongs and an equal concomitant of the duties of a statutory regulator, which are informed by Part IV A of the Constitution. To that extent, the functions and powers of a regulator must be inspired by the obligation in Part IV

A and Article 48 A. The State's '*endeavour to protect and improve the environment*' will be partial, if it does not encompass a duty to restitute.

17. Of all the duties imposed under Article 51A, the obligation to conserve and protect water and air, is perhaps the most significant, amidst our climate change crisis. The Water Act and the Air Act institutionalised all efforts and actions that need to be taken to protect air that we breathe and water that we consume by creating the Pollution Control Boards. These Boards functioning as our environment regulators are expected to act with *institutional foresight* by evolving necessary policy perspectives and action plans. Working with perpetual seal and succession, they are to develop and retain *institutional memory* so that they can act on the basis of the experience, data and information that they would have gathered and processed. *Institutional expertise* is critical, and these bodies are to employ human resource which have domain expertise and talent. These bodies are intended to maintain *institutional integrity* by taking independent and objective decisions without governmental or industrial control. These values flow naturally if there is *institutional transparency and accountability*. It is in this perspective that we need to interpret Section 33A of the Water Act and 31A of the Air Act.

10. Duty to Restitute *v.* Power to Punish and Penalise.

18. There is a distinction between an action for environmental damages for restitution or remediation and imposition of penalties or fines levied at the culmination of a punitive action. This Court in *M.C. Mehta* (supra), while referring to the provisions of the Water Act, Air Act and the Environment Protection Act observed -

> *"17. All the three Acts, referred to above, also contemplate the taking of the cognizance of the offences by the court. Thus, a person guilty of contravention of provisions of any of the three Acts which constitutes an offence has to be prosecuted for such offence and in case the offence is found proved then alone can he be punished with imprisonment and fine or both. The sine qua non for punishment of imprisonment and fine is a fair trial in a competent court. The punishment of imprisonment or fine can be imposed only after the person is found guilty."*
>
> > *"24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender.…"*

19. Therefore, Indian law distinguishes between the imposition of a monetary penalty or fine, which constitutes punitive action following a

determination of guilt after adherence to the statutorily prescribed procedure, and the payment of damages for restitution or remediation as compensatory relief.

20. In this context, it is important to turn to one of the key principles of Indian environmental law - the *Polluter Pays* principle. This principle has been a part of Indian jurisprudence since 1996. In *Indian Council for Enviro-Legal Action* v. *Union of India*[17], this Court held that according to the *Polluter Pays* principle the responsibility for repairing the damage is that of the offending industry. The Court further held that the powers of the Central Government to issue directions under Section 5 read with Section 3 of the Environment Protection Act include the power to impose costs for remedial measures -

> *"60. … Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government (or its delegate, as the case may be) to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment…". Section 5 clothes the Central Government (or its delegate) with the power to issue directions for achieving the objects of the Act. Read with the wide definition of 'environment' in Section 2(a), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. …*
>
> *67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" principle. …Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It*

is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit."

(emphasis added)

21. Subsequently, the Court in *Vellore Citizens' Welfare Forum* v. *Union of India*[18], has held that the liability for environmental damage includes both a compensatory aspect and a restorative or remedial aspect-

"12. … The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

(emphasis added)

22. Application of the *Polluter Pays* principle not only includes payment for restoring the damaged environment, taking remedial action to deal with the damage and compensating for the direct harm caused, but also for avoiding pollution. In *Research Foundation for Science (18)* v. *Union of India*[19], this Court held-

"29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case."

(emphasis added)

23. The Court further held that the observations of the Court in in *Deepak Nitrite Ltd.* v. *State of Gujarat*[20] that "*mere violation of the law in not observing the norms would result in degradation of environment would not be correct*" were confined to the facts of that case. The Court clarified that the actual degradation of the environment is not a necessary condition for the application of polluter pays principle, as long as the offending activities have the potential of degrading the environment -

"30…The decision also cannot be said to have laid down a

proposition that in the absence of actual degradation of environment by the offending activities, the payment for repair on application of the polluter-pays principle cannot be ordered. The said case is not relevant for considering cases like the present one where offending activities have the potential of degrading the environment. In any case, in the present case, the point simply is about the payments to be made for the expenditure to be incurred for the destruction of imported hazardous waste and amount spent for conducting tests for determining whether it is such a waste or not…"

(emphasis added)

24. The distinction between a punitive action and a direction to pay environmental damages was made by the National Green Tribunal in *State Pollution Control Board, Odisha* v. *Swastik Ispat Pvt. Ltd.*[21]. The Tribunal in this case was considering the legality of forfeiture of bank guarantees in case a defaulting industry did not comply with the regulatory conditions within the stipulated timeframe. The Tribunal expressly considered the opinion of the High Court in the impugned judgment before us today and held -

"45. It is evident from the above facts and the reasoning that there was actual levy of penalty or damages by the DPCC and it was in consequence of such imposition of penalty/damages that the Units were called upon to furnish bank guarantees for granting of consent. In other words, bank guarantee was required to be furnished in furtherance to the imposition of a penalty or damages in that case. It was not an act de hors the imposition of penalty and had the element of punitive action. In the present case, it is not a consequence of a punitive or penal action but is in exercise of the powers vested in the Board in relation to recalling the conditions of consent and ensuring their implementation while also making compensatory provision for remedying the apprehended wrong to the environment. In the cases in hand, the Board has not imposed any penalty upon the units but has granted consent to them on certain conditions, none of which is punitive. They squarely fall within the power of the Board to prevent and control pollution in consonance with the scheme of the Acts concerned. Thus, on facts, the judgments of the High Court in Splendor *(supra) do not have any application to the present case. In any case, we are of the considered view that asking for a bank guarantee as an interim measure for due performance of the conditions of the consent order being compensatory in nature, is not punitive.*

46. We have already noticed above that there is a clear distinction between a penal and a compensatory provision. In such matters, the paramount question that would normally fall for determination before

a court or tribunal would be whether the action contemplated is penal or compensatory. This issue shall have to be decided with reference to the facts of the case, the provisions of the law applicable and the intent of the authority concerned. Once it falls in the 'compensatory' field, then it will necessarily be beyond the purview of penalty…."

(emphasis added)

25. In *Swastik Ispat*, the Green Tribunal correctly interpreted Sections 33A and 31A of the Water and Air Acts. The judgment of the High Court in *Splendor* had not yet been taken up or considered by this Court at that time, the Tribunal had to distinguish the facts of *Splendor* to arrive at its own conclusion. In view of our reasoning and interpretation of Sections 33A and 31A of the Water and Air Acts, we have no hesitation to hold that the Green Tribunal is correct in its approach.

26. More recently, in *T.N. Godavarman Thirumulpad, In Re* v. *Union of India*[22], this Court while considering the issue of illegal construction in the Corbett Tiger Reserve drew the distinction between action against persons violating the law and measures for restoration of the environmental damage. The Court held -

"173. … However, the principle of restoration of damaged ecosystem would require the States to promote the recovery of threatened species. We are of the considered view that the States would be required to take steps for the identification and effective implementation of active restoration measures that are localised to the particular ecosystem that was damaged. The focus has to be on restoration of the ecosystem as close and similar as possible to the specific one that was damaged.

175. We find that, bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. We are of the considered view that the State cannot run away from its responsibilities to restore the damage done to the forest. The State, apart from preventing such acts in the future, should take immediate steps for restoration of the damage already done; undertake an exercise for determining the valuation of the damage done and recover it from the persons found responsible for causing such a damage."

(emphasis added)

11. Principles.

27. Based on a review of precedents on this issue, the following legal position emerges -

I. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure

for environmental damage or as an *ex-ante* measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

II. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts respectively.

III. Indian environmental law has assimilated[23] the principle of *Polluter Pays* and there is also a statutory incorporation of this principle in our laws.[24] The invocation of this principle is triggered in the situations[25]; i) when an established threshold or prescribed requirement is exceeded or breached, and it does result in environmental damage, ii) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage and also iii) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

IV. Environmental regulators have a compelling duty to adopt and apply preventive measures irrespective of actual environmental damage. *Ex-ante* action shall be taken by these regulators and for this purpose a certain measure in exercise of powers under Sections 33A and 31A of the Water and Air Acts is necessary.

V. The powers of the Boards under Sections 33A and 31A of the Water and Air Acts are identical to that of Section 5 of the Environment Protection Act. Under Section 5, the Central Government or its delegate has the power to issue directions to the polluting industry to pay certain amounts and utilise the said fund for carrying out remedial measures. The Boards are empowered to take similar actions under Sections 33A and 31A of the Acts.

28. Having considered the principles that govern our environmental laws and on interpretation of Sections 33A and 31A of the Water and Air Acts, we are of the opinion that that the Division Bench of the High Court was not correct in restrictively reading powers of the Boards. We are of the opinion that these regulators in exercise of these powers can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential or actual environmental damage.

29. There is no doubt that Section 33A of the Water Act and Section 31A of the Air Act give the State Boards powers to issue necessary

directions for environmental restoration, remediation and compensation and for the payment of costs for the same. The National Green Tribunal's judgment in *Swastik Ispat* correctly identified the Boards powers to issue directions for payment of environmental damages under Section 33A of the Water Act and the Section 31A of the Air Act. A restrictive interpretation which fails to differentiate between environmental damages and punitive action significantly encumbers the Boards ability to discharge its duties.

30. The Board's powers under Section 33A of the Water Act and Section 31A of the Air Act have to be read in light of the legal position on the application of *Polluter Pays* principle as formulated and explained. This means that State Board cannot impose environmental damages in case of every contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by the erring entity, or the same is so imminent, that the State Board must initiate action under Section 33A of the Water Act and Section 31A of the Air Act.

31. At this stage, we must also take note of the recent 2024 amendments[26] to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation[27] and introduction of the office of "Adjudicatory Officer"[28]. Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for, (a) the promotion of awareness, education and

research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

A. Board's Responsibility to Choose Appropriate Course of Action.

32. Given their broad statutory mandate and the significant duty towards public health and environmental protection the Boards must have the power and distinction to decide the appropriate action against a polluting entity. It is essential that the Boards function effectively and efficiently by adopting such measures as is necessary in a given situation. The Boards can decide whether a polluting entity needs to be punished by imposition of penalty or if the situation demands immediate restoration of the environmental damage by the polluter or both.

B. Powers Must Be Guided by Transparency and Non-Arbitrariness.

33. While we hold that the Boards have the power to direct the payment of environmental damages, we make it clear that this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency.

34. This Court has underscored the importance of strong institutional frameworks in environmental governance that are effective, accountable and transparent. In *Bengaluru Development Authority* v. *Sudhakar Hegde*[29], this Court held-

> *"95. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision-making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision-making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place."*

(emphasis added)

35. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action. At present environmental damages are being levied by the Boards on the basis of certain guidelines issued by the Central Pollution Control Board in its document "*General framework for imposing environmental damage compensation*" issue in December, 2022. These guidelines seem to have been issued pursuant to the directions of the NGT.[30] It is important that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. This will enable declaration of a law that applies and ensures its recognition and easy implementation.

36. These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

37. While we have reversed the decision of the High Court on the principle of law and hold that the environmental regulators, the Pollution Control Boards, can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts, we issue the following consequential directions.

38. In view of the fact that the show cause notices in these cases relate to the year 2006 and those show cause notices were set-aside by the Single as well as by the Division Benches of the High Court, we are of the opinion that no purpose will be served in reviving the said show cause notices at this point of time. In the facts and circumstances of the case while we allow the appeal on the principle of law there shall not be any consequential direction for reviving the show cause notices which have been set-aside concurrently by the Single as well as by the Division Bench of the High Court. If certain amounts have been collected on the basis of the said show cause notices they shall be returned by DPCC within a period of six weeks from the date of this order, and if amounts are not deposited or collected the appellant,

DPCC shall not take any further action.

39. For the reasons stated above:

(a) we allow these appeals and set aside the judgment and order dated 23.01.2012, passed by the Division Bench of the High Court of Delhi to the extent of declaration of law but direct that the show cause notices that have been set aside by the High Court shall not be revived.

(b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts.

(c) it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an *ex-ante* measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.

———

[1] DPCC is a regulatory body in the National Capital Territory of Delhi, established as a 'State Board'. These Boards are constituted under section 4 of the Water Act and under section 4 or section 5 of the Air Act, and exercise powers granted under section 33A of the Water Act and section 31A of the Air Act. Our interpretation of section 33A and 31A herein will apply to any such body established under said Acts.

[2] Hereinafter referred to as the Water Act and Air Act respectively.

[3] (2012) 195 DLT 177.

[4] Hereinafter referred to as *Splendor.*

[5] (2000) 6 SCC 213, para 13-17.

[6] *State of MP* v. *Centre for Environment Protection Research & Development*, (2020) 9 SCC 781.

[7] Civil Appeal No. 2001 of 2013.

[8] *Chandra Kishore Jha* v. *Mahavir Prasad*, (1999) 8 SCC 266.

[9] Section 17 of Air Act states -

***17. Functions of State Boards**.— (1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974, the functions of a State Board shall be—*

(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;

(b) to advise the State Government on any matter concerning the prevention, control or abatement relating to air pollution;

(c) to collect and disseminate information relating to air pollution;

(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise a mass-education programme relating thereto;

(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft: Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

(i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;

(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

[10] Sections 25, 27 of Water Act and Section 21 of Air Act

[11] Section 20 of Water Act and Section 25 of Air Act

[12] Section 23 of Water Act and Section 24 of Air Act

[13] Section 21 of Water Act and Section 26 of Air Act

[14] Section 31A of the Air Act states -

***31A. Power to give directions**.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

[15] Statement of Objects and Reasons for Air Act states, "*2. The Air Act is implemented by the Central and State Governments and the Central and State Boards. Over the past few years, the implementing agencies have experienced some administrative and practical difficulties in effectively implementing the provisions of this Act and have brought these to the notice of Government. The ways and means to remove these difficulties have been thoroughly examined in consultation with the concerned Central Government departments, the State Governments and the Central and State Boards. Taking into account the views expressed, the Government have decided to make certain amendments to the Act in order to remove such difficulties. 3. The Bill, inter alia, seeks to make the following amendments in the Act, namely—*

….

iv) In order to prevent effectively air pollution, the punishments provided in the Act are proposed to be made stricter.

….

(vii) It is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending establishments or stoppage or regulation of supply of services such as, water and electricity.

(viii) It is proposed to empower the Boards to approach courts to obtain orders restraining any person from causing air pollution."

[16] Act 19 of 2010.

[17] (1996) 3 SCC 212

[18] (1996) 5 SCC 647

[19] (2005) 13 SCC 186.

[20] (2004) 6 SCC 402

[21] 2014 SCC OnLine NGT 13.

[22] (2025) 2 SCC 641

[23] *Indian Council for Enviro-Legal Action* (supra n.12); *Vellore* (supra n 13).

[24] ***Section 20. Tribunal to apply certain principles-*** *The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.*

[25] Loveleen Bhullar, 'The Polluter Pays Principle: Scope and Limits or Judicial Decisions'; in Shibani Ghosh (ed.), *Indian Environmental Law* (Orient Black Swan 2019).

[26] The Water (Prevention and Control of Pollution) Amendment Act, 2024, Jan Vishwas (Amendment of Provisions) Act, 2023.

[27] Section 41 in the erstwhile Water Act has been substituted by sections 41 and 41A, whereby contravention of directions issued under section 20 (for obtaining information), 32 (for imposing emergency measures in case of pollution), 33 (for restraining apprehended pollution) or 33A would now be punishable by penalty alone; thereby replacing the earlier penal framework comprising of imprisonment *and* fine. Similar amendments done for section 42 (penalty for certain acts), section 43 for contravention of directions under section 24 (prohibiting use of stream or well), section 44 (prohibiting alteration of meter, etc.), and section 45A (residuary). Correspondingly, under the Air Act criminal liability under section 37 for contravention of directions under section 22 (restricting emission beyond standards) or section 31A has been restricted to fine alone. Similar amendments have been brought in section 38 and 39 (residuary). Punishment for imprisonment has been retained only for violation of section 21 and failure to pay penalty or additional penalty under section 39D.

[28] In the Water Act, section 45B puts in place a new office by the title of 'Adjudicating Officer', who would be an officer not below the rank of Joint Secretary to the Centre or Secretary to the State, appointed by the Central Government. Adjudicating Officer is empowered to inquire and impose penalties under sections 41, 41A, 42, 43, 44, 45A and 48. Appeal against such imposition lies before the National Green Tribunal as per section 45C. The Adjudicating Officer is further empowered to file a complaint for cognizance under section 49. Corresponding additions have been made under the Air Act as well under sections 39A (Adjudicating Officer), 39B (Appeal to NGT) and 43 (Cognizance of offences).

[29] (2020) 15 SCC 63

[30] Pursuant to the NGT in its order in O.A. No. 606/2018 dated 24.04.2019.

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In the Supreme Court of India

(BEFORE DR D.Y. CHANDRACHUD, C.J. AND HIMA KOHLI, J.)

STATE BANK OF INDIA AND OTHERS . . Appellants;

Versus

RAJESH AGARWAL AND OTHERS . . Respondents.

Civil Appeal No. 7300 of 2022[†] with Nos. 7301-02 of 2022[†], 7303-05 of 2022[‡] and 7306 of 2022[††], 7307 of 2022[‡‡] and with Writ Petition No. 138 of 2022[‡‡], decided on March 27, 2023

A. **Administrative Law — Natural Justice — Generally — Nature, Scope and Applicability — Principles of natural justice in general, and the principle of *audi alteram partem* in particular — Meaning and Constituents of — Administrative action having civil consequence — Civil consequence — Meaning of — Blacklisting or debarment of a person/entity (classification of account as fraud account, as in present case — *see in detail* Shortnotes *F* and *G*) — Applicability of principles of natural justice prior to imposition of — Blacklisting — Meaning — Principles elucidated**

— Audi Alteram Partem — Right to Hearing — Generally — Meaning, Nature, Scope and Applicability — Words and Phrases — "Civil consequence", "blacklisting"

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B. **Administrative Law — Natural Justice — Generally — Nature, Scope and Applicability — Reporting of criminal offence/Registration of FIR — Inapplicability of principles of natural justice or rule of *audi alteram partem* — Reiterated — Criminal Procedure Code, 1973, S. 154**

Held :

On Principles of Natural Justice

The principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice

are entrenched in Indian jurisprudence : (*i*) *nemo judex in causa sua*, which means that no person should be a Judge in their own cause; and (*ii*) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.

(Para 36)

Principles of natural justice vis-à-vis criminal proceedings

The principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by the Supreme Court.

(Para 37)

Providing an opportunity of hearing to the accused in every criminal case before taking any action against them would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd, and self-defeating. The Code of Criminal Procedure, 1973 does not provide for right of hearing before the registration of an FIR.

(Para 38)

Union of India v. *W.N. Chadha*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171; *Anju Chaudhary* v. *State of U.P.*, (2013) 6 SCC 384 : (2013) 4 SCC (Cri) 503, *relied on*

On administrative actions having civil consequence and on meaning of civil consequence

It is now a settled principle of law that the rule of *audi alteram partem* applies to administrative actions, apart from judicial and quasi-judicial functions. It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity.

(Para 40)

Every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. An administrative action which involves civil consequences must be made consistent with the rules of natural justice.

(Para 41)

The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

(Para 41)

Any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard.

(Para 42)

A.K. Kraipak v. *Union of India*, (1969) 2 SCC 262; *St. Anthony's College* v. *Rev. Fr. Paul Petta*, 1988 Supp SCC 676 : 1989 SCC (L&S) 44; *Uma Nath Pandey* v. *State of U.P.*, (2009) 12 SCC 40 : (2010) 1 SCC (Cri) 501; *State of Orissa* v. *Binapani Dei*, AIR 1967 SC 1269; *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248, *followed*

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. The 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.

(Paras 44 and 45)

Civil consequences entail infractions not merely of property or personal rights, but also of civil liberties, material deprivations, and non-pecuniary damages. Every order or proceeding which involves civil consequences or adversely affects a citizen should be in accordance with the principles of natural justice.

(Para 46)

Mohinder Singh Gill v. *Chief Election Commr.*, (1978) 1 SCC 405; *D.K. Yadav* v. *J.M.A. Industries Ltd.*, (1993) 3 SCC 259 : 1993 SCC (L&S) 723; *Canara Bank* v. *V.K. Awasthy*, (2005) 6 SCC 321 : 2005 SCC (L&S) 833, *followed*

On meaning of blacklisting

A list of persons marked out for special avoidance, antagonism, or enmity on

the part of those who prepare the list or those among whom it is intended to circulate; as where a trades union "blacklists" workmen who refuse to conform to its rules, or where a list of insolvent or untrustworthy persons is published by a commercial agency or mercantile association.

(Para 56)

Black's Law Dictionary, 5th Edn. (1979), *referred to*

Blacklist is a list of persons or firms against whom its compiler would warn the public, or some section of the public; a list of persons unworthy of credit, or with whom it is not advisable to make contracts. Thus the official list of defaulters on the stock exchange, for instance is a blacklist. To put a man's name on such a blacklist without lawful cause is actionable; and the further publication of such a list will be restrained by injunction.

(Para 56)

P. Ramanatha Aiyar, *The Law Lexicon : The Encyclopaedic Law Dictionary* (1997 Edn.), *referred to*

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A blacklist is : (*i*) a list of insolvent or untrustworthy persons published by a commercial agency or mercantile association; and (*ii*) a list of persons unworthy of credit, or with whom it is not advisable to make contracts.

(Para 57)

On natural justice vis-à-vis blacklisting

Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

(Paras 58 and 59)

Erusian Equipment & Chemicals Ltd. v. *State of W.B.*, (1975) 1 SCC 70; *Joseph Vilangandan* v. *Executive Engineer (PWD)*, (1978) 3 SCC 36, *followed*

It is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making

representations against the order.

(Para 60)

Raghunath Thakur v. *State of Bihar*, (1989) 1 SCC 229, *followed*

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

(Para 61)

Gorkha Security Services v. *State (NCT of Delhi)*, (2014) 9 SCC 105, *followed*

C. **Administrative Law — Natural Justice — Generally — Nature, Scope and Applicability — Reading in of natural justice principles in general, and the rule of *audi alteram partem* in particular, into primary legislation/statutes, delegated/subordinate legislation, notifications or circulars by implication (in present case, the 2016 Directions — *see in detail* Shortnotes *F* and *G*) — Exclusion of principles of natural justice, including the principle of *audi alteram partem* — When permissible — Principles elucidated**

Held :

The 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 framework of the statute under which the enquiry is held.

(Para 45)

The principles of natural justice can be read into a statute or a notification where it is silent on granting an opportunity of a hearing to a party whose rights and interests are likely to be affected by the orders that may be passed.

(Para 67)

The Court must lean in favour of reading in the principles of natural justice when faced with a regulatory silence. Any exclusion must be confined to the narrowest

possible limits. The application of the requirement of a prior hearing could be excluded only in situations where importing it would have the effect of paralysing the entire process.

(Para 74)

The general principle — as distinguished from an absolute rule of uniform application — seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

(Para 68)

Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules

operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves.

(Para 70)

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So far as the *audi alteram partem* rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the *audi alteram partem* rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands.

(Para 71)

Swadeshi Cotton Mills v. *Union of India*, (1981) 1 SCC 664; *K.I. Shephard* v. *Union of India*, (1987) 4 SCC 431 : 1987 SCC (L&S) 438; *Mangilal* v. *State of M.P.*, (2004) 2 SCC 447 : 2004 SCC (Cri) 1085, *followed*

Union of India v. *Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *distinguished on this point*

Ajit Kumar Nag v. *Indian Oil Corpn. Ltd.*, (2005) 7 SCC 764 : 2005 SCC (L&S) 1020, *referred to*

It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the provision concerned the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

(Paras 89 to 92)

Union of India v. *J.N. Sinha*, (1970) 2 SCC 458; *C.B. Gautam* v. *Union of India*, (1993) 1 SCC 78, *followed*

Sahara India (Firm) (1) v. *CIT*, (2008) 14 SCC 151; *Kesar Enterprises Ltd.* v. *State of U.P.*, (2011) 13 SCC 733, *considered*

D. **Administrative Law — Natural Justice — Audi Alteram Partem — Right to Hearing — Adverse material, awareness/supply of — Supply of adverse material to the person likely to be affected by such materials — When necessary — Law summarised**

Held :

It is not possible to lay down any general principle on the question as to whether the report of an investigating body or of an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. The answer to this question also must always depend on the facts and circumstances of the case. It is not at all unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report. Whether the report should be furnished or not must therefore depend in every individual case on the merits of that case.

(Paras 78 and 79)

Keshav Mills Co. Ltd. v. *Union of India*, (1973) 1 SCC 380; *Swadeshi Cotton Mills* v. *Union of India*, (1981) 1 SCC 664, *followed*

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The rule of natural justice, namely, the *audi alteram partem* rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative inquiry.

(Para 80)

Union of India v. *Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *followed*

Audi alteram partem, therefore, entails that an entity against whom evidence is collected must : (*i*) be provided an opportunity to explain the evidence against it;

(*ii*) be informed of the proposed action, and (*iii*) be allowed to represent why the proposed action should not be taken.

(Para 81)

E. **Constitution of India — Art. 14 — Non-arbitrariness, reasonableness and fairness in administrative action and exercise of discretionary power — Duty of administrative authorities to act fairly and without being discriminatory — Validity of administrative action — Tests for — Natural justice principles, and particularly the rule of *audi alteram partem*, as being inherent and integral part of guarantee contained in Art. 14 — Principles reiterated**

Held :

An arbitrary State action is violative of Article 14 of the Constitution. The principle of non-arbitrariness pervades Article 14. An administrative action can be tested for constitutional infirmities under Article 14 on four grounds : (*i*) unreasonableness or irrationality; (*ii*) illegality; (*iii*) procedural impropriety; and (*iv*) proportionality. However, the scope of such judicial review is limited to ascertaining the deficiency in the decision-making process, and not the correctness of the choice made by the administrator.

(Para 84)

United Commercial Bank v. *P.C. Kakkar*, (2003) 4 SCC 364 : 2003 SCC (L&S) 468, *followed*

E.P. Royappa v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165; *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248; *State of A.P.* v. *McDowell & Co.*, (1996) 3 SCC 709; *Om Kumar* v. *Union of India*, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039, *considered*

Fairness in action requires that procedures which permit impairment of fundamental rights ought to be just, fair, and reasonable. The principles of natural justice have a universal application and constitute an important facet of procedural propriety envisaged under Article 14. The rule of *audi alteram partem* is recognised as being a part of the guarantee contained in Article 14.

(Para 85)

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The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus : violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14 :

therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

(Para 85)

Union of India v. *Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672, *followed*

The rule of *audi alteram partem* is a part of Article 14. The rule of *audi alteram partem* enforces the equality clause in Article 14. Therefore, any administrative action which violates the rule of *audi alteram partem* is arbitrary and violative of Article 14.

(Para 86)

Cantonment Board v. *Taramani Devi*, 1992 Supp (2) SCC 501; *DTC* v. *Mazdoor Congress*, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213, *followed*

Administrative proceedings which entail significant civil consequences must be read consistent with the principles of natural justice to meet the requirement of Article 14. Where possible, the rule of *audi alteram partem* ought to be read into a statutory rule to render it compliant with the principles of equality and non-arbitrariness envisaged under Article 14.

(Para 87)

Discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable.

(Para 88)

Olga Tellis v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545, *followed*

F. **Debt, Financial and Monetary Laws — Reserve Bank — RBI (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016 — Constitutional validity of — Principles of natural justice, held, must be read into the 2016 Directions to save them from the vice of arbitrariness — There is no implied exclusion of the principles of natural justice in general, or the principle of *audi alteram partem* in particular, in the 2016 Directions**

— Banking authorities concerned, thus held, are duty bound to : (i) adopt fair procedure; and (ii) hear borrowers after serving notice to them, before classifying their accounts as fraud account, as such action would have penal and civil consequences against such borrowers — Banking authorities, further held, must pass reasoned orders when classifying account as fraud

account — However, clarified, no hearing is required before lodging FIR

— Criminal Procedure Code, 1973 — S. 154 — Registration of FIR — Inapplicability of principles of natural justice or rule of *audi alteram partem* — Reiterated

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G. **Debt, Financial and Monetary Laws — Reserve Bank — RBI (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016 — Cl. 8.12 — Borrowers and Third Parties — Distinction between, explained — Held, this distinction contained in the 2016 Directions does not render them manifestly arbitrary — Debarment of borrowers under Cl. 8.12.1, held, is a serious civil consequence similar to blacklisting, thus, the principles of natural justice shall be applicable to them as well (*see in detail* Shortnote *F*)**

Held :

RBI has the right to take all such measures as are necessary to protect the health of the banking system. Hence, the 2016 Directions lay down the procedure for banks, who in case of a breach of loan agreements by the borrowers, can seek appropriate remedies by approaching law-enforcement agencies and debarring borrowers from accessing further institutional finance. However, any policy decision which contemplates serious civil consequences for any person will be open to challenge for being arbitrary if the principles of natural justice are not applied during the process.

(Para 83)

Delhi Cloth & General Mills Co. Ltd. v. *Union of India*, (1983) 4 SCC 166, *cited*

Chapter VIII of the 2016 Directions provides detailed procedures to be followed by the banks before forming an opinion to proceed with a criminal complaint against the borrowers. Under the said chapter, the lender banks have to report a borrower to the CBI after classifying the borrower's account as fraudulent. However, the classification of the borrower's account does not simpliciter lead to reporting of criminal complaint with the enforcement authorities; it also entails penal consequences for the borrowers as laid down under Clause 8.12.

(Para 39)

The process of forming an informed opinion under the 2016 Directions is administrative in nature. This has also been acceded to by RBI and lender banks in their written submissions.

(Para 40)

While acknowledging that the procedure which has been laid down in the 2016 Directions is conceived in public interest, to protect the banking system, it cannot

ignore the serious civil consequences which emanate to the borrowers.

(Para 48)

On civil consequences likely to be suffered by borrowers

Clause 8.12 of the 2016 Directions deals with the penal measures for borrowers. Clause 8.12.1 provides that penal provisions as applicable to wilful defaulters would apply to fraudulent borrowers, including the promoters and Directors of the borrower company. The consequences that apply to a wilful defaulter under the Master Circular on Wilful Defaulters have been culled out as;

(*a*) No additional facilities to be granted by any bank/financial institution [Para 2.5(*a*)].

(*b*) Entrepreneurs/Promoters would be barred from institutional finance for a period of 5 years [Para 2.5(*a*)].

(*c*) Any legal proceedings can be initiated, including criminal complaints [Para 2.5(*b*)].

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(*d*) Banks and financial institutions to adopt proactive approach in changing the management of the wilful defaulter [Para 2.5(*c*)].

(*e*) Promoter/Director of wilful defaulter shall not be inducted by another borrowing company [Para 2.5(*d*)].

(*f*) As per Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot be a resolution applicant.

(para 49)

In addition to the above consequences, borrowers are also liable to suffer the following consequences under the 2016 Directions:

(*1*) No restructuring may be made in the case of an RFA or fraud accounts (Clause 8.12.2).

(*2*) No compromise on settlement involving a fraudulent borrower is allowed unless the conditions stipulate that the criminal complaint will be continued (Clause 8.12.3).

(*3*) The above consequences show that the classification of a borrower's account as fraud under the 2016 Directions has difficult civil consequences for the borrower. The classification of an account as fraud not only results in reporting the fact to investigating agencies, but has other penal and civil consequences as specified in Clauses 8.12.1 and 8.12.3.

(para 50)

***On applicability of observations made in* Jah Developers, (2019) 6 SCC 787**

In *Jah Developers case*, Master Circular on Wilful Defaulters (revised Circular

dated 1-7-2015 read with RBI Circular 1-7-2013) was involved. Since the consequences flowing from the two circulars are similar, the observations in *Jah Developers case* on the effect of declaring a borrower as wilful defaulter will be squarely applicable to the present case.

(Paras 52 and 53)

It was observed in *Jah Developers* that "Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably."

(Para 53)

SBI v. *Jah Developers (P) Ltd.*, (2019) 6 SCC 787 : (2019) 3 SCC (Civ) 412, *explained* and *followed*

Classification of the borrower's account as fraud under the 2016 Directions virtually leads to a credit freeze for the borrower, who is debarred from raising finance from financial markets and capital markets. The bar from raising finances could be fatal for the borrower leading to its "civil death" in addition to the infraction of their rights under Article 19(1)(g) of the Constitution. Since debarring disentitles a person or entity from exercising their rights and/or privileges, it is elementary that the principles of natural justice should be made applicable and the person against whom an action of debarment is sought should be given an opportunity of being heard.

(Para 55)

Indeed, debarment is akin to blacklisting a borrower from availing credit. Debarring a borrower under Clause 8.12.1 of the 2016 Directions is akin to blacklisting the borrower for being untrustworthy and unworthy of credit by the banks. The Supreme Court has consistently held that an opportunity of a hearing ought to be provided before a person is put on a blacklist.

(Paras 56 and 57)

Classification of a borrower's account as fraud has the effect of preventing the borrower from accessing institutional finance for the purpose of business. It also

entails significant civil consequences as it jeopardises the future of the business of the borrower. Therefore, the principles of natural justice necessitate giving an opportunity of a hearing before debarring the borrower from accessing institutional finance under Clause 8.12.1 of the 2016 Directions. The action of classifying an account as fraud not only affects the business and goodwill of the borrower, but also the right to reputation.

(Para 62)

One is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review.

(Para 63)

State of Maharashtra v. *Public Concern for Governance Trust*, (2007) 3 SCC 587, *followed*

The competence of RBI to issue the 2016 Directions is not a bone of contention in these appeals. RBI, in its estimation, has the power to determine and frame economic measures in the public interest to ensure the proper management of banking companies. The point however is that the implementation of a decision to secure the health of banking companies must comport with the due process of law. The civil consequences which follow upon a classification of a borrower's account as fraud are serious and prejudicial to the interests of a borrower. Principles of fair play require that the borrower ought to be given an opportunity of being heard before classifying the account as fraud in accordance with the procedure laid down under the 2016 Directions.

(Para 65)

Peerless General Finance & Investment Co. Ltd. v. *RBI*, (1992) 2 SCC 343; *Joseph Kuruvilla Vellukunnel* v. *RBI*, AIR 1962 SC 1371; *Internet & Mobile Assn. of India* v. *RBI*, (2020) 10 SCC 274, *distinguished*

The 2016 Directions do not expressly exclude a right of hearing to the borrowers before action to class their account as frauds is initiated.

(Para 67)

The borrowers have dwelt on Clause 8.9.6 of the 2016 Directions according to which the entire exercise commencing from the detection of fraud by an individual bank up to the declaration of fraud by JLF is to be completed within six months.

(Para 72)

Clause 8.9.6 of the 2016 Directions contemplates that the procedure for the classification of an account as fraud has to be completed within six months. The procedure adopted under the 2016 Directions provides enough time to the banks to deliberate before classifying an account as fraud. During this interval, the banks

can serve a notice to the borrowers, and give them an opportunity to submit their reply and representation regarding the findings of the forensic audit report. Given the wide time-frames contemplated under the 2016 Directions as well as the nature

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of the procedure adopted, it is reasonably practicable for banks to provide an adequate opportunity of a hearing to the borrowers before classifying their account as fraud.

(Para 75)

The mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the 2016 Directions.

(Para 81)

The 2016 Directions do not expressly provide the borrowers an opportunity of being heard before classifying the borrower's account as fraud. *Audi alteram partem* must then be read into the provisions of the 2016 Directions.

(Para 87)

It has been held that the classification of a borrower's account as fraud in accordance with the procedure laid down in the 2016 Directions entails significant civil consequences for the borrower. Since the 2016 Directions do not expressly provide an opportunity of being heard to the borrower before classifying an account as fraud, the rule of *audi alteram partem* has to be read into the provisions of the said directions to save them from the vice of arbitrariness.

(Para 93)

The rule of *audi alteram partem* ought to be read into Clauses 8.9.4 and 8.9.5 of the 2016 Directions. Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of *audi alteram partem*. The banks would be at liberty to take

fresh steps in accordance with this decision.

(Para 95)

On passing reasoned orders by banking authorities

The requirement of passing a reasoned order must be read into the 2016 Directions because : (*i*) a reasoned order allows an aggrieved party to demonstrate that the reasons which persuaded the authority to pass an adverse order against the interests of the aggrieved party are extraneous or perverse; and (*ii*) the obligation to record reasons acts as a check on the arbitrary exercise of the powers.

(Para 94)

Kranti Associates (P) Ltd. v. *Masood Ahmed Khan*, (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852, *referred to*

On distinction between borrowers and third parties

Clause 8.12.5 of the 2016 Directions provides that the banks have to satisfy themselves of the involvement of the third parties and provide them with an opportunity of being heard before reporting them to the Indian Banks' Association.

(Para 96)

Borrowers and the third parties stand on a different footing because : (*i*) the borrowers are the main perpetrators of fraud, while the third parties are merely facilitators; and (*ii*) it is the borrowers who face the significant civil consequences stipulated under Clauses 8.12.1 and 8.12.2, while the third-party service providers are merely referred to the Indian Banks' Association which maintains a caution list of such service providers. Thus, this does not render the 2016 Directions manifestly arbitrary. However, as held hereinabove, the principles of natural justice shall apply in the case of borrowers as well, before any account can be classified as a fraud account.

(Para 97)

The conclusions are summarised below:

(*1*) No opportunity of being heard is required before an FIR is lodged and registered.

(*2*) Classification of an account as fraud not only results in reporting the crime to the investigating agencies, but also has other penal and civil consequences against the borrowers.

(*3*) Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the 2016 Directions results in serious civil consequences for the borrower.

(*4*) Such a debarment under Clause 8.12.1 of the 2016 Directions is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. The Supreme Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted.

(*5*) The application of *audi alteram partem* cannot be impliedly excluded under the 2016 Directions. In view of the time-frame contemplated under the 2016 Directions as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.

(*6*) The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/JLF before their account is classified as fraud under the 2016 Directions. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order.

(*7*) Since the 2016 Directions do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, *audi alteram partem* has to be read into the provisions of the directions to save them from the vice of arbitrariness.

(para 98)

Rajesh Agarwal v. *RBI*, 2020 SCC OnLine TS 2021, *affirmed*

Shree Saraiwwalaa Agrr Refineries Ltd. v. *Union of India*, 2021 SCC OnLine TS 1816; *Yashdeep Sharma* v. *RBI*, 2021 SCC OnLine TS 1852; *Mona Jignesh Acharya* v. *Bank of India*, 2021 SCC OnLine Guj 2811, *reversed*

SBI v. *Rajesh Agarwal*, 2021 SCC OnLine SC 3453; *Shree Saraiwwalaa Agrr Refineries Ltd.* v. *Union of India*, 2022 SCC OnLine SC 1905; *Yashdeep Sharma* v. *RBI*, 2022 SCC OnLine SC 1907; *Jayeshbhai Chandubhai Patel* v. *Bank of India*, 2021 SCC OnLine Guj 3025, *referred to*

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H. **Debt, Financial and Monetary Laws — Reserve Bank — RBI (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016 — Legal framework obtaining under, and purpose of — Explained**

(Paras 17 to 35)

G-D/69813/CV

Advocates who appeared in this case:

Tushar Mehta, Solicitor General, Gopal Jain and Navin Pahwa, Senior

Advocates [G.N. Reddy, Ramesh Babu M.R. (Advocate-on-Record), Ms Manisha Singh, Ms Nisha Sharma, Ms Jagrati Bharti, Ms Tanya Chowdhary, Rohan Srivastava, Mohit D. Ram (Advocate-on-Record), Ravi Pahwa, Ms Monisha Handa, Rajul Shrivastav, Rajul Shravastav, Anubhav Sharma, Suraj Prakash, Mrinal Litoriya, Ms Priyanka Solanki, Ms Nidhi Mohan Parashar (Advocate-on-Record), Ms Pragya Baghel (Advocate-on-Record), Sanjay Kapur (Advocate-on-Record), Ms Megha Karnwal, Surya Prakash, Arjun Bhatia, Lalit Rajput, Mahesh Agarwal, Sumesh Dhawan, Vastala Kak, Himanshu Satija, Pranjit Bhattacharya, Chirag Nayak, Nishant Rao and E.C. Agrawala (Advocate-on-Record), Advocates], for the Appellants;

Dr Abhishek Manu Singhvi, Ranjit Kumar, Dhruv Mehta, Arunabh Chowdhury, Navin Pahwa, Senior Advocates [Suraj Prakash, Sanjay Kapur (Advocate-on-Record), Ms Megha Karnwal, Arjun Bhatia, Lalit Rajput, Jasmeet Singh (Advocate-on-Record), Mahinder Singh Hura, Saif Ali, Divjot Singh Bhatia, Pushpendra Singh Bhadoriya, Ms Rusheet Saluja, Vijay Sharma, Garvit Thukral, Ms Pragya Baghel (Advocate-on-Record), Coac (Advocate-on-Record), Ms Richa Kapoor (Advocate-on-Record), Kunal Anand, Ms Tusharika Sharma, Prakhar Dixit, Amresh Bind, Ramesh Babu M.R. (Advocate-on-Record), Krishan Kumar (Advocate-on-Record), Pankaj Vivek, Ms Neetu Sharma, Nitin Pal, Dheeraj Kumar, Ms Muskan Jain, Amit K. Nain (Advocate-on-Record), A. Radhakrishnan (Advocate-on-Record), Anand Shankar Jha (Advocate-on-Record), G.N. Reddy (Advocate-on-Record), Brijesh Kr. Tamber (Advocate-on-Record), Arvind Kr. Sharma (Advocate-on-Record) and Mukesh Kr. Maroria (Advocate-on-Record), Advocates], for the Respondents.

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The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, C.J.—

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A. *Background*

1. The civil appeals arise out of a challenge to the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016 ("Master Directions on Frauds") issued by

Reserve Bank of India ("RBI"), these directions were challenged before different High Courts primarily on the ground that no opportunity of being heard is envisaged to borrowers before classifying their accounts as fraudulent. The High Court of Telangana has held in the impugned judgment[1] that the principles of natural justice must be read into the provisions of the Master Directions on Frauds. The decision has been assailed by RBI and lender banks through these civil appeals.

2. In this background the Court has to consider whether the principles of natural justice should be read into the provisions of the Master Directions on Frauds. For the reasons to follow, we hold that the principles of natural justice, particularly the rule of *audi alteram partem*, has to be necessarily read into the Master Directions on Frauds to save it from the vice of arbitrariness. Since the classification of an account as fraud entails serious civil consequences for the borrower, the directions must be construed reasonably by reading into them the requirement of observing the principles of natural justice.

B. *Facts*

I. *SLPs (C) Nos. 3931, 4922 and 5056 of 2021*

3. BS Ltd. is a company engaged in the business of power transmission and distribution, passive telecom infrastructure, renewable energy, and mineral resources. It availed loans amounting to Rs 1406 crores from various banks. The company failed to meet its payment obligations to lender banks, thereby

defaulting in repayment of credit facilities. In accordance with the Master Directions on Frauds, all the lender banks formed a Joint Lenders Forum ("JLF") with State Bank of India as the lead bank.

4. JLF declared the company's assets as Non-Performing Assets ("NPA") on 29-8-2016. The lender banks decided to adopt the Sustainable Structuring of Stressed Assets Scheme ("S 4A Scheme") and suggested a forensic audit report and Techno Economic Viability ("TEV") study in its meeting held on 11-7-2016. Based on the conclusions of the forensic audit report, JLF closed the issue stating that there were no irregularities. However, based on the TEV study it was concluded that the company was not eligible for the S 4A Scheme and requested it to submit an alternative plan for regularisation of its account. In the meanwhile, IDBI Bank—one of the lender banks—red-flagged the account of the company. Additionally, proceedings under the Insolvency and Bankruptcy Code, 2016 were also initiated against the company.

5. On 15-2-2019, JLF declared the account of the company as fraud by invoking Clause 2.2.1(*g*) of the Master Directions on Frauds. Subsequently, the Fraud Identification Committee ("FIC") passed a resolution on 31-7-2019 identifying the company's account as fraud. The company filed a writ petition challenging both the decision of JLF dated 15-2-2019 and the resolution of the FIC dated 31-7-2019 before the High Court of Telangana.

6. By a judgment dated 10-12-2020[1], a Division Bench of the High Court allowed the writ petition by holding that the principle of *audi alteram partem* ought to be read into Clauses 8.9.4 and 8.9.5 of the Master Directions on Frauds. The High Court further directed the lender banks : (*i*) to give an opportunity of a hearing to the borrowers after furnishing a copy of the forensic audit report; and (*ii*) to provide an opportunity of a personal hearing to the borrower before classifying their account as fraud.

7. The judgment of the High Court was challenged in SLP (C) No. 3931 of 2021. On 15-4-2021[2], this Court, while issuing notice, partially stayed the directions issued by the Telangana High Court in the following terms : (*Rajesh Agarwal case*[2], SCC OnLine SC para 6)

> "*6*. Meanwhile, the Minutes/Order dated 15-2-2019 passed by the Joint Lenders Meeting is not to be acted upon. The High Court insofar as it observed that a personal hearing be given is stayed."

II. *SLPs (C) Nos. 762, 873 and 1514 of 2022*

8. The appellant is a company involved in the manufacture of edible oils, fats, rice and semolina products in the State of Telangana. From 2003 to 2015, the appellant availed of credit facilities to the tune of Rs 675 crores from a consortium of banks led by Andhra Bank (now merged with Union Bank of India). The appellant was declared as an NPA on 14-5-2018 with effect from 31-3-2018. Thereafter, the consortium of lenders in a meeting of JLF decided

to conduct a forensic audit of the appellant for the period till 31-3-2019. The appellant participated in the audit process and submitted all the information required by the auditor from time to time.

9. In September 2019, the appellant learnt that its account has been declared as fraud by Union Bank of India (erstwhile Andhra Bank). Aggrieved by that classification, the appellant filed a writ petition before the High Court of Telangana. The High Court declined to deal with the issues pertaining to the principles of natural justice and fair

play considering the fact that they were pending before this Court in SLP (C) No. 3931 of 2021. By its judgment dated 22-12-2021[3], the High Court dismissed the writ petitions. The Court held that the appellant's account was rightly classified as fraud because the forensic audit report contained adverse findings against the appellant.

10. On 24-1-2022[4], this Court, while issuing notice in SLP (C) No. 762 of 2022, directed that the matter may not be reported to the Central Bureau of Investigation ("CBI") for the time being. On 28-3-2022[5], this Court passed a similar ad interim order in SLP (C) No. 873 of 2022 and SLP (C) No. 1514 of 2022.

III. *SLP (C) No. 2980 of 2022*

11. The appellant is a promoter and Director of Golden Jubilee Hotels Pvt. Ltd. ("GJHPL"). GJHPL availed financial assistance from the respondent banks for the construction and development of a hotel in Hyderabad. GJHPL's account was declared as NPA from 31-12-2015 because of its inability to service its debts to the respondent banks. At its meeting on 21-4-2016, JLF decided to carry out a special audit of the appellant's company. Thereafter, the appellant participated in a series of meetings between JLF and was consulted by the forensic auditor during the preparation of the audit report. Bank of Baroda red-flagged the appellant's account on 3-5-2019 based on the observations in the forensic audit report. The appellant's account was classified as fraud on 14-8-2019. A criminal complaint was also lodged with the CBI. The appellant came to know about the classification of their account as fraud in 2021, when they received a copy of the FIR.

12. The appellant filed a writ petition before the High Court of Telangana challenging the validity of the Master Directions on Frauds. The High Court by its judgment dated 31-12-2021[6] held that no relief could be granted to the appellant on the issue of personal hearing since SLP (C) No. 3931 of 2021 was pending before this Court. The High Court also held that the appellant's account was rightly classified as fraudulent in view of the adverse findings in the forensic audit report.

IV. *Writ Petition (C) No. 138 of 2022 and SLP (C) No. 3388 of 2022*

13. The appellant is one of the Directors of a company called M/s Vimal Oil & Foods Ltd. The said company availed of loan facilities from various financial institutions over a period of time. In 2015, the auditor

of the respondent bank flagged certain irregularities in the accounts of the company. Based on a special audit, the respondent bank declared the account of the company as NPA on 30-9-2015. Thereafter, on 5-7-2016, the company's account was red-flagged by the respondent bank. In the meantime, the corporate insolvency resolution process ("CIRP") was initiated against the company on 19-12-2017 and the appellant was suspended as Managing Director of the company. Upon suspension, the appellant was not invited to attend the meetings of JLF. The appellant allegedly learnt that the respondent bank had classified their account as fraud on 21-2-2018 though without any intimation. Further, based on a letter addressed by the respondent bank to the CBI, an FIR came to be registered against the appellant. The appellant alleges that they acquired knowledge about their account being classified as fraud and registration of the FIR only when a search was carried out at their residential premises in pursuance of the FIR.

14. The appellant filed a special civil application challenging the actions of the respondent bank, which was dismissed[7] by the Single Judge of the High Court of Gujarat. The Division Bench partly allowed a letters patent appeal by its judgment dated 23-12-2021[8] by permitting the appellant to address a representation to the respondent bank but declined to allow a personal hearing. The appellant/petitioner has also invoked the writ jurisdiction of this Court by challenging the validity of the Master Directions on Frauds.

C. *Submissions*

15. On behalf of the borrowers, we have heard Dr Abhishek Manu Singhvi, Mr Ranjit Kumar, Mr Dhruv Mehta, Mr Arunabh Chowdhury, Mr Navin Pahwa, Senior Advocates and Mr Suraj Prakash, learned counsel. The counsel submit that the procedure for classification of an account as fraud under the Master Directions on Frauds suffers from illegalities because:

15.1. Under Clauses 8.9.4 and 8.9.5 of the Master Directions on Frauds, no notice is given to the borrowing company or its promoters, and Directors including whole-time Directors. They are not given an opportunity to present a defence and even a copy of the final decision is not provided to them.

15.2. The classification of the borrower's bank accounts as fraud under the Master Directions on Frauds carries serious civil consequences. The penal provisions under Clause 8.12 of the Master Directions on Frauds are also applicable to the promoters, Directors, and other whole-time Directors. Once a bank account is classified as fraudulent, it carries significant consequences according to the Master Directions on Frauds such as filing of a complaint with the CBI and debarment of the promoters and Directors from accessing institutional

finance. Further, the action of the banks of classifying an account

as "fraud" is stigmatic, akin to blacklisting the borrower, which affects their right to reputation. Thus, there is a direct impact on the fundamental rights of the individuals concerned, as a consequence of the classification of an account as fraud.

15.3. The Master Directions on Frauds are violative of Articles 14, 19, and 21 of the Constitution of India as they debar a company and its promoters and Directors from accessing financial and credit markets for a period of five years without even providing a show-cause notice or opportunity of being heard.

15.4. There are other facets to the principle of *audi alteram partem* apart from a personal hearing. The Master Directions on Frauds does not stand good on other facets of *audi alteram partem* such as notice of allegations levelled and evidence collected, notice of the penalty proposed, among others. According to the procedure laid down under the Master Directions on Frauds, a company or its promoters and Directors are not even informed that they have been classified as fraud and that a penalty has been imposed upon them.

15.5. The Master Directions on Frauds are silent on whether or not the borrower is entitled to an opportunity of being heard after the receipt of forensic audit report and before deciding whether the borrower's account should be classified as fraud. Since the decision to classify the account as fraud entails significant civil consequences, principles of natural justice ought to be read into the Master Directions on Frauds.

15.6. Clause 8.12.5 of the Master Directions on Frauds expressly stipulates that an opportunity of hearing be provided to third parties. The directions are manifestly arbitrary since on the one hand they provide an opportunity of hearing to third parties, but such an opportunity is denied to the borrowers.

15.7. Although the purpose and object of the Master Directions on Frauds is speedy detection and reporting of fraud to the law-enforcement agencies, such exigencies cannot be a valid ground to exclude the applicability of the principles of natural justice.

15.8. The decision of this Court in *SBI* v. *Jah Developers (P) Ltd.*[9] read in the requirement of natural justice for the purposes of declaring a borrower as a wilful defaulter. The principles laid down in *Jah Developers*[9] would be squarely applicable to the present matters.

15.9. The participation of the borrower during the preparation of the forensic audit report does not in itself fulfil the requirement of the principles of natural justice under the Master Directions on Frauds. Those directions do not expressly provide for the participation or inputs from a borrower during the preparation of the forensic audit report, giving rise to the possibility that in some cases, the borrower is completely excluded from the forensic audit process.

16. On behalf of RBI and lender banks, we have heard Mr Tushar Mehta, Solicitor General of India, Mr Gopal Jain, Senior Counsel and Mr Ramesh Babu M.R. and Mr G.N. Reddy, learned counsel. The counsel submitted that the challenge to the classification of a loan account as fraudulent on the ground of a

violation of the principles of natural justice is devoid of merit for the following reasons:

16.1. The Master Directions on Frauds were necessitated to protect the interests of depositors and banks from the growing instances of frauds. RBI is duly empowered to take pre-emptive measures in public interest to ensure that fraudulent borrowers are brought to justice and loss caused to the banks is mitigated. The clauses of the Master Directions on Frauds, therefore, must be interpreted in light of their purpose and objective, that is, timely detection and dissemination of information and reporting about the fraud.

16.2. The provisions of the Master Directions on Frauds must be construed keeping in mind the following thresholds : (*i*) justness; (*ii*) fairness towards the parties aggrieved; (*iii*) reasonability; and (*iv*) proportionality between the mischief and the corrective measure. Considering that the Master Directions on Frauds is an economic policy decision, this Court must exercise greater latitude while construing its provisions.

16.3. The procedure for classifying an account as fraud under the Master Directions on Frauds is not arbitrary. The classification is done only for reporting the matter to the law-enforcement agencies. The banks already have in place a structured organisational set-up to identify and investigate fraudulent activities in bank accounts. Banks file complaints before the law-enforcement agencies, who conduct an investigation. The ultimate decision on fraud is rendered by a competent court of law.

16.4. Principles of natural justice are not applicable at the stage of setting the process of criminal law in motion. Since the lender bank is

an injured party in case of fraudulent accounts, it has the right to report the crime to the law-enforcement agencies without giving an opportunity of being heard to the fraudulent borrower. Issuing of a show-cause notice to fraudulent borrowers may forewarn them and hamper the investigation by the law-enforcement agencies.

16.5. Debarring fraudulent borrowers from availing bank finances is a preventive measure without which the Master Directions on Frauds will be rendered toothless. Such a measure is necessary to prevent a fraudulent borrower from committing frauds in other banks.

16.6. The requirement of notice or prior hearing could be excluded if it impedes the taking of prompt action. Further, it is not an inviolable rule that personal hearing ought to be given in all cases.

16.7. The process for classification of a borrower as a wilful defaulter under the Master Circular on Wilful Defaulters[10] significantly differs from the process of classification of an account as fraud under the Master Directions on Frauds. Therefore, the decision of this Court in *Jah Developers*[9] will not be applicable to the facts of the present appeal.

D. *Analysis*

D.1. *Regulatory framework*

17. RBI is a statutory body constituted under Section 3 of the Reserve Bank of India Act, 1934. RBI has been constituted for the purpose of taking over the management of currency from the Central Government, regulating the issue of bank notes, keeping of reserves with a view to securing monetary stability, and operating the currency and credit system of India. RBI is entrusted with the statutory obligation of administering the provisions of the Banking Regulation Act, 1949 ("the BR Act"). The BR Act vests RBI with various powers with respect to banking companies such as granting licences, conducting inspections and giving directions.

18. Section 35-A of the BR Act empowers RBI to issue directions to banking companies. Such directions are statutory in nature. Section 35-A is extracted below:

> "**35-A. *Power of the Reserve Bank to give directions***.—(1) Where the Reserve Bank is satisfied that—
>
> (*a*) in the public interest; or
>
> (*aa*) in the interest of banking policy; or
>
> (*b*) to prevent the affairs of any banking company being

conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(*c*) to secure the proper management of any banking company generally;

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which modifications or cancellation shall have effect."

19. RBI has been issuing "master directions" on diverse issues since 2016. These directions encompass the instructions on that particular subject. The master directions are updated whenever there is a change in policy, and such changes get reflected on RBI's website. In exercise of the power conferred by Section 35-A, RBI issued the Master Directions on Frauds on 1-7-2016 to consolidate and update seven earlier circulars on classification of fraud, reporting and monitoring issued between June 2009 and January 2016. The Master Directions on Frauds were updated on 3-7-2017.

20. The purpose of the Master Directions is extracted below:

"1.3. *Purpose*

These directions are issued with a view to providing a framework to banks to enable them to detect and report frauds early and taking timely consequent actions like reporting to the investigative agencies so that fraudsters are brought to book early, examining staff accountability and do effective fraud risk management. These directions also aim to enable faster dissemination of information by the Reserve Bank of India (RBI) to banks on the details of frauds, unscrupulous borrowers and related parties, based on the banks' reporting so that necessary safeguards/preventive measures by way of appropriate procedures and internal checks may be introduced and caution exercised while dealing with such parties by banks."

21. The above directions were issued to achieve specific purposes :

(*i*) early and timely detection and reporting of fraud; (*ii*) early and timely reporting of fraud to investigative agencies; (*iii*) quicker dissemination of information pertaining to details of fraud and fraudulent borrowers to banks; and (*iv*) to facilitate the adoption of preventive measures by banks. These purposes are reflected in Clause 2.1.1 of the Master Directions on Frauds:

> "Clause 2.1.1 The Chairmen and Managing Directors/Chief Executive Officers (CMD/CEOs) of banks must provide focus on the "Fraud Prevention and Management Function" *to enable, among others, effective investigation of fraud cases and prompt as well as accurate reporting to appropriate regulatory and law-enforcement authorities including Reserve Bank of India*."
>
> (emphasis supplied)

22. Clause 2.2.1 classifies frauds based on the provisions of the Penal Code, 1860:

> "Clause 2.2.1 In order to have uniformity in reporting, frauds have been classified as under, based mainly on the provisions of the Indian Penal Code:
>
> (*a*) Misappropriation and criminal breach of trust
>
> (*b*) Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.
>
> (*c*) Unauthorised credit facilities extended for reward or for illegal gratification
>
> (*d*) Cash shortages.
>
> (*e*) Cheating and forgery
>
> (*f*) Fraudulent transactions involving foreign exchange
>
> (*g*) Any other type of fraud not coming under the specific heads as above."

23. Clause 3 advises banks to make full use of the Central Fraud Registry ("CFR") (a database created by RBI to enable banks to share information on fraudulent accounts) for timely identification, control, reporting, and mitigation of risks associated with fraud. Clause 3.3 of the said directions emphasises

the need to provide timely information on frauds and penalises banks for non-adherence to timelines:

> "3.3.1. Banks should ensure that the reporting system is suitably streamlined so that delays in reporting of frauds, submission of

delayed and incomplete fraud reports are avoided. Banks must fix staff accountability in respect of delays in reporting fraud cases to RBI.

3.3.2. *Delay in reporting of frauds and the consequent delay in alerting other banks about the modus operandi and dissemination of information through Caution Advice/CFR against unscrupulous borrowers could result in similar frauds being perpetrated elsewhere*. Banks should therefore, strictly adhere to the time-frame fixed in this circular for reporting of fraud cases to RBI failing which they would be liable for penal action prescribed under Section 47-A of the Banking Regulation Act, 1949."

(emphasis supplied)

24. The Master Directions on Frauds provides a regulatory framework for four types of frauds : (*i*) Chapter IV deals with attempted fraud; (*ii*) Chapter VII deals with cheque related frauds; (*iii*) Chapter VIII deals with loan frauds; and (*iv*) Chapter X deals with cases relating to theft, burglary, dacoity, and bank robberies. The dispute in the present batch of cases is concerned with Chapter VIII dealing with loan frauds.

25. Chapter VI states that as a general rule, cases involving fraud/embezzlement should invariably be referred to the State Police or CBI. Chapter VIII provides for more robust safeguards which ensure that banks report frauds to investigating agencies after forming an informed opinion.

26. The framework for dealing with loan frauds was put in place by a Circular dated 7-5-2015. The objective of the framework has been enumerated in Clause 8.2:

"8.2. *Objective of the framework*

The objective of the framework is to direct the focus of banks on the aspects relating to prevention, early detection, prompt reporting to RBI (for system level aggregation, monitoring and dissemination) and the investigative agencies (for instituting criminal proceedings against fraudulent borrowers) and timely initiation of the staff accountability proceedings (for determining negligence or connivance, if any) while ensuring that the normal conduct of business of the banks and their risk taking ability is not adversely impacted and no new and onerous responsibilities are placed on the banks. In order to achieve this objective, the framework has stipulated timelines with the action incumbent on a bank. The timelines/stage-wise actions in the loan life-cycle are expected to compress the total time taken by a bank to identify a fraud and aid more effective action by the law-enforcement agencies. The early detection of fraud and the necessary corrective action are important to reduce the quantum of loss which the continuance of the fraud may entail."

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27. Clause 8.3 deals with Early Warning Signals ("EWS") and Red-Flagged Accounts ("RFA"). Under Clause 8.3.1, an RFA is one where a suspicion of fraudulent activity is thrown up by the presence of one or more EWS. EWS which should alert bank officials about wrongdoings in a loan account are set out in Annexure II. Some of those enumerated are set out below:

27.1. (*a*) Default in undisputed payment to statutory bodies as declared in the annual report; (*b*) dishonour of high value cheques;

27.2. Delay in payment of outstanding dues;

27.3. Funds coming from other banks to liquidate the outstanding loan amount except in the normal course;

27.4. Exclusive collateral charged to a number of lenders without NOCs of existing charge holders;

27.5. Dispute on title to collateral securities; and

27.6. Critical issues in the stock audit report.

28. EWS provide indications of wrongdoing which may later turn out to be frauds. A bank is put on alert by the presence of EWS and must use them to trigger a detailed investigation into the bank account concerned. According to Clause 8.3.5, the officer responsible for operations in the account should promptly report any manifestation of EWS to the Fraud Monitoring Group ("FMG") constituted by the bank. The clause directs banks to take cognizance of EWS and launch a detailed investigation into an RFA.

29. Clause 8.8 deals with situations where a bank is the sole lender. In such situations, the FMG is entrusted with the responsibility to take a call on whether a bank account in which EWS are observed should be classified as RFA. The bank is permitted to use external auditors before taking a final call on RFA status. However, within six months the bank is required to either lift the RFA status or classify the account as fraud in accordance with the investigation or forensic audits.

30. Clause 8.9 deals with lending under consortium or multiple banking arrangements ("MBA"). Clause 8.9.2 provides that all banks which have financed a borrower under an MBA should take coordinated action based on a commonly agreed strategy for subsequent legal actions, follow-ups, exchange of details and information on a consistent basis. Clauses 8.9.4 and 8.9.5 provide the procedure for classification of a borrower's account as fraud:

"8.9.4. The initial decision to classify any standard account or NPA account as RFA or fraud will be at the individual level and it would be the responsibility of this bank to report the RFA or fraud status of the account on the CRILC platform so that other banks are alerted. In case it is decided at the individual bank level to classify the account as fraud straightaway at this stage itself, the bank shall then report the fraud to RBI within 21 days of detection and also report the case to CBI/Police, as it is being done hitherto. Further, within 15 days of RFA/fraud classification, the bank which has red-flagged the account or detected the fraud would ask the consortium leader or the largest lender under MBA to convene a meeting of JLF to discuss the issue. *The meeting of JLF so requisitioned must be convened within 15 days of such a request being received. In case there is a broad agreement, the account should be classified as fraud; else based on the majority rule of agreement*

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amongst bank with at least 60% share in the total lending, the account should be red-flagged by all the banks and subjected to a forensic audit commissioned or initiated by the consortium leader or the largest lender under MBA. All banks, as part of the consortium of multiple-banking arrangement, shall share the costs and provide the necessary support for such an investigation.

8.9.5. The forensic audit must be completed within a maximum period of three months from the date of JLF meeting authorising the audit. Within 15 days of the completion of the forensic audit, JLF shall reconvene and decide on the status of the account, either by consensus or the majority rule as specified above. *In case the decision is to classify the account as a fraud, the RFA status shall be changed to Fraud in all banks and reported to RBI and on the CRILC platform within a week of the said decision. Besides, within 30 days of RBI reporting, the bank commissioning/initiating the forensic audit should lodge a complaint with the CBI on behalf of all banks in the consortium/MBA. For this purpose, if the bank initiating the forensic audit is a private sector bank, the complaint shall be lodged with the CBI by the PSU bank with the largest exposure to the account in the consortium/MBA. If there is no PSU bank in the consortium/MBA or it is a solo bank lending by a private sector bank/foreign bank, the private bank/foreign bank shall report to the police as per extant instructions*. This would be in addition to the complaint already lodged by the first bank which had detected the

fraud and informed the consortium/MBA."

(emphasis supplied)

31. Clause 8.9.4 stipulates that the initial decision to classify an account as RFA or fraud vests with the individual bank. Once the bank classifies the account as fraud, it is the responsibility of that bank to report the RFA or fraud status on the account on the Central Repository of Information on Large Credits ("CRILC") platform to alert other banks. In case the individual bank decides to straightaway classify the account as fraud, it is obligated to report the fraud to RBI within 21 days of detection and also report the case to CBI/Police. Further, within 15 days the individual bank could ask the consortium leader or the largest lender under the MBA to convene a meeting of JLF to discuss the issue. The meeting of JLF has to be convened within 15 days of the request being received. JLF can classify an account as fraud in case there is a broad consensus. Otherwise, the clause indicates that based on an agreement amongst banks with at least a 60% share in total lending, the account should be red-flagged by all banks and subjected to forensic audit commissioned or initiated by the consortium leader or the largest lender under MBA.

32. Clause 8.9.5 states that the forensic audit has to be completed within 3 months from the date of JLF meeting authorising the audit. Within 15 days of the completion of the audit, JLF has to decide to classify the account as fraud and report it to RBI. The clause also requires the bank commissioning the audit to lodge a complaint with CBI on behalf of all banks in the consortium within 30 days of reporting to RBI.

33. Clause 8.11 deals with the filing of complaints to law-enforcement agencies. Clause 8.11.1 requires banks to lodge complaints with law-enforcement agencies immediately on detecting fraud. The clause enjoins banks to avoid delay in filing a complaint as it may result in loss of documents,

unavailability of witnesses, absconding borrowers, loss of money trail and asset tripping by fraudulent borrowers.

34. The penal measures for fraudulent borrowers are set out in Clause 8.12 which reads as follows:

8.12. *Penal measures for fraudulent borrowers*

8.12.1. *In general, the penal provisions as applicable to wilful defaulters would apply to the fraudulent borrowers including the promoter/Director(s) and other whole-time Directors of the company*

insofar as raising of funds from the banking system or from capital markets by companies with which they are associated is concerned, etc. In particular, borrowers who have defaulted and have also committed a fraud in the account would be debarred from availing bank finance from scheduled commercial banks, development financial institutions, government-owned NBFCs, investment institutions, etc. for a period of five years from the date of full payment of the defrauded amount. After this period, it is for individual institutions to take a call on whether to lend to such a borrower. The penal provisions would apply to non-whole time Directors (like nominee Directors and independent Directors) only in rarest of cases based on conclusive proof of their complicity.

8.12.2. *No restructuring or grant of additional facilities may be made in the case of RFA or fraud accounts*. However, in cases of fraud/malfeasance where the existing promoters are replaced by new promoters and the borrower company is totally delinked from such erstwhile promoters/management, banks and JLF may take a view on restructuring of such accounts based on their viability, without prejudice to the continuance of the criminal actions against the erstwhile promoters/management.

8.12.3. No compromise settlement involving a fraudulent borrower is allowed unless the conditions stipulate that the criminal complaint will be continued.

8.12.4. In addition to above borrower-fraudsters, third parties such as builders, warehouse/cold storage owners, motor vehicle/tractor dealers, travel agents, etc. and professionals such as architects, valuers, chartered accountants, advocates, etc. are also held accountable if they play a vital role in credit sanction/disbursement or facilitated the perpetration of frauds. Banks are advisable to report to Indian Banks Association ("IBA") the details of such parties involved in frauds.

8.12.5. Before reporting to IBA, banks have to satisfy themselves of the involvement of third parties concerned and also provide them with an opportunity of being heard. In this regard the banks should follow normal procedures and the processes followed should be suitably recorded. On the basis of such information, IBA would, in turn, prepare caution lists of such third parties for circulation among the banks."

(emphasis supplied)

35. Clause 8.12.1 provides that the penal provisions as applicable to wilful defaulters would apply to fraudulent borrowers as regards the raising of funds from the banking system and financial institutions. Importantly, under the clause, fraudulent borrowers include promoters, Directors, and other whole-time Directors of the borrowing company. It

debars fraudulent borrowers from availing banking finance from the scheduled commercial banks, development

financial institutions, government-owned NBFCs, investment institutions, etc. for a period of five years from the date of full payment of the defrauded amount. Even after the completion of the five-year period, it is for the individual financial institutions to decide whether to lend to fraudulent borrowers, including Directors and promoters of the borrowing company. Additionally, under Clause 8.12.2, fraudulent borrowers are denied restructuring or grant of additional facilities by banks and other such financial institutions.

D.2. *Audi alteram partem*

36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence : (*i*) *nemo judex in causa sua*, which means that no person should be a Judge in their own cause; and (*ii*) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.[11]

37. While the borrowers argue that the actions of banks in classifying borrower accounts as fraud according to the procedure laid down under the Master Directions on Frauds is in violation of the principles of natural justice, RBI and lender banks argue that these principles cannot be applied at the stage of reporting a criminal offence to investigating agencies. At the outset, we clarify that principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by this Court.

38. In *Union of India* v. *W.N. Chadha*[12], a two-Judge Bench of this

Court held that that providing an opportunity of hearing to the accused in every criminal case before taking any action against them would "frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd, and self-defeating"[13]. Again, a two-Judge Bench of this Court in *Anju Chaudhary* v. *State of U.P.*[14] has reiterated that the Code of Criminal Procedure, 1973 does not provide for right of hearing before the registration of an FIR.

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39. Chapter VIII of the Master Directions on Fraud provides detailed procedures to be followed by the banks before forming an opinion to proceed with a criminal complaint against the borrowers. Under the said chapter, the lender banks have to report a borrower to the CBI after classifying the borrower's account as fraudulent. However, the classification of the borrower's account does not simpliciter lead to reporting of criminal complaint with the enforcement authorities; it also entails penal consequences for the borrowers as laid down under Clause 8.12.

40. The process of forming an informed opinion under the Master Directions on Frauds is administrative in nature. This has also been acceded to by RBI and lender banks in their written submissions. It is now a settled principle of law that the rule of *audi alteram partem* applies to administrative actions, apart from judicial and quasi-judicial functions.[15] It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity.

41. In *State of Orissa* v. *Binapani Dei*[16], a two-Judge Bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an administrative action which involves civil consequences must be made consistent with the rules of natural justice : (AIR p. 1271, para 9)

> "9. … The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its

officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

42. In *Maneka Gandhi* v. *Union of India*[17], a seven-Judge Bench of this Court held that any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard. This has been reiterated in a catena of decisions of this Court.

43. In view of the settled position of law, the next question that arises before us is the scope and definition of the phrase "civil consequences".

44. In *Mohinder Singh Gill* v. *Chief Election Commr.*[18], a Constitution Bench of this Court held that "civil consequences" cover infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In that case, the Court held that denial of a democratic right to cast a vote inflicts civil consequences. In *D.K. Yadav* v. *J.M.A. Industries Ltd.*[19], a three-Judge Bench of this Court observed that "everything that affects a citizen in his civil life inflicts a civil consequence".

45. In *Canara Bank* v. *V.K. Awasthy*[20], a two-Judge Bench of this Court succinctly summarised the history, scope, and application of the principles of natural justice to administrative actions involving civil consequences in the following terms : (SCC pp. 331-32, para 14)

"*14*. 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 framework 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. The 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*."

(emphasis supplied)

46. There is a consistent pattern of judicial thought that civil consequences entail infractions not merely of property or personal rights, but also of civil liberties, material deprivations, and non-pecuniary damages. Every order or proceeding which involves civil consequences or adversely affects a citizen should be in accordance with the principles of natural justice.

47. The next question that requires our consideration is whether the classification of a borrower's account as fraudulent under the Master Directions on Frauds entails civil consequences to the borrowers.

48. RBI and lender banks have argued that the civil consequences contemplated in Clause 8.12.1 of the Master Directions on Frauds are reasonable. Under the said clause, the borrower, including the promoters and Directors of the company, are barred from availing credit from financial markets and credit markets for a period of five years, and possibly even beyond. According to RBI and lender banks, such a restriction has to be perceived from the perspective of public interest. While acknowledging that the procedure

which has been laid down in the Master Directions on Frauds is conceived in public interest, to protect the banking system, we cannot ignore the serious civil consequences which emanate to the borrowers.

49. Clause 8.12 of the Master Directions on Frauds deals with the penal measures for borrowers. Clause 8.12.1 provides that penal provisions as applicable to wilful defaulters would apply to fraudulent borrowers, including the promoters and Directors of the borrower company. The consequences that apply to a wilful defaulter under the Master Circular on Wilful Defaulters have been culled out in *Jah Developers*[9] : (SCC p. 795, para 9)

"*9*. … serious consequences follow after a person has been classified as a wilful defaulter. These consequences are as follows:

(*a*) No additional facilities to be granted by any bank/financial institution [Para 2.5(*a*)].

(*b*) Entrepreneurs/Promoters would be barred from institutional finance for a period of 5 years [Para 2.5(*a*)].

(*c*) Any legal proceedings can be initiated, including criminal complaints [Para 2.5(*b*)].

(*d*) Banks and financial institutions to adopt proactive approach in changing the management of the wilful defaulter [Para 2.5(*c*)].

(*e*) Promoter/Director of wilful defaulter shall not be inducted by another borrowing company [Para 2.5(*d*)].

(*f*) As per Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot be a resolution applicant."

50. In addition to the above consequences, borrowers are also liable to suffer the following consequences under the Master Directions on Frauds:

50.1. No restructuring may be made in the case of an RFA or fraud accounts (Clause 8.12.2).

50.2. No compromise on settlement involving a fraudulent borrower is allowed unless the conditions stipulate that the criminal complaint will be continued (Clause 8.12.3).

50.3. The above consequences show that the classification of a borrower's account as fraud under the Master Directions on Frauds has difficult civil consequences for the borrower. The classification of an account as fraud not only results in reporting the fact to investigating agencies, but has other penal and civil consequences as specified in Clauses 8.12.1 and 8.12.3.

51. The borrowers have placed reliance on *Jah Developers*[9] to submit that debarring them from accessing institutional finance under Clause 8.12.1 of the Master Directions affects the fundamental right of the borrower to carry on business. On the other hand, RBI and lender banks have argued that reliance on the observations in *Jah Developers*[9] is misplaced because the decision dealt with the classification of a borrower as wilful defaulter, whereas the present batch of appeals deals with the classification of a borrower's account as fraud.

52. The question in *Jah Developers*[9] was whether a person who is declared to be a wilful defaulter according to the procedure laid down in the Master Circular on Wilful Defaulters is entitled to be represented by a lawyer of their choice before such a declaration is made. The Court

held that a borrower does not have the right to be represented by a lawyer in the course of in-house proceedings envisaged in Para 3 of the Master Circular on Wilful Defaulters. Para 3 of the Master Circular on Wilful Defaulters provides a two-tier process for identification of a wilful defaulter. At the first stage, a First Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the bank must, after examining the evidence of wilful default and concluding that wilful default has occurred, issue a show-cause notice to the borrowers and promoters/whole-time Directors concerned calling for their submissions. The First Committee has to consider the submissions before recording the fact of wilful default with reasons. If the Committee deems it necessary, it could also provide a personal hearing to the borrower and the promoter/whole-time Director of the borrowing company. The second stage is that the order of the First Committee is reviewed by another Committee, known as the Review Committee. Thus, it is clear that the procedure for declaration of a borrower as a wilful defaulter is different from the procedure envisaged under the Master Directions on Frauds for classifying a borrower's account as fraud. However, by virtue of Clause 8.12.1 of the Master Directions on Frauds, the penal provisions applicable to wilful defaulters also apply to fraudulent borrowers. Thus, although the procedure adopted for declaration of a wilful defaulter is different from that envisaged for classifying the borrower's account as fraud, they will face similar consequences. In fact, as mentioned above, the borrowers' accounts classified as fraud under the Master Directions on Frauds will face certain additional consequences which have been laid down in Clauses 8.12.2 and 8.12.3.

53. Since the consequences flowing from the two circulars are similar, the observations in *Jah Developers*[9] on the effect of declaring a borrower as wilful defaulter will be squarely applicable to the present case. The observations of the Court are extracted below : (SCC p. 803, para 24)

> "*24*. … However, *we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/Director of a wilful defaulter cannot be made promoter or Director of any other borrower company*. Equally, under Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even

apply to be a resolution applicant. *Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably*."

(emphasis supplied)

54. In *Jah Developers*[9], this Court construed the Master Circular on Wilful Defaulters by harmonising it with the principles of natural justice. Particularly, it was directed that : (*i*) the First Committee must give its order to the borrower as soon as possible; (*ii*) the borrower, thereafter, can file a written representation against the order of First Committee to the Review Committee; and (*iii*) the Review Committee must pass a reasoned order which must be provided to the borrower.

55. Classification of the borrower's account as fraud under the Master Directions on Frauds virtually leads to a credit freeze for the borrower, who is debarred from raising finance from financial markets and capital markets. The bar from raising finances could be fatal for the borrower leading to its "civil death" in addition to the infraction of their rights under Article 19(1)(g) of the Constitution. Since debarring disentitles a person or entity from exercising their rights and/or privileges, it is elementary that the principles of natural justice should be made applicable and the person against whom an action of debarment is sought should be given an opportunity of being heard.

56. Indeed, debarment is akin to blacklisting a borrower from availing credit. *Black's Law Dictionary*[21] explains the term "blacklist", which has been defined in the following terms:

> "A list of persons marked out for special avoidance, antagonism, or enmity on the part of those who prepare the list or those among whom it is intended to circulate; as where a trades union "blacklists" workmen who refuse to conform to its rules, or *where a list of insolvent or untrustworthy persons is published by a commercial agency or mercantile association*."

(emphasis supplied)

Similarly, *P. Ramanatha Aiyar's Law Lexicon*[22] defines the term "blacklist" as follows:

> "Blacklist is a list of persons or firms against whom its compiler would warn the public, or some section of the public; *a list of persons unworthy of credit, or with whom it is not advisable to make contracts*. Thus the official list of defaulters on the Stock Exchange is a blacklist. To put a man's name on such a blacklist without lawful

cause is actionable; and the further publication of such a list will be restrained by injunction."

(emphasis supplied)

57. A blacklist is : (*i*) a list of insolvent or untrustworthy persons published by a commercial agency or mercantile association; and (*ii*) a list of persons unworthy of credit, or with whom it is not advisable to make contracts. Before

this Court, RBI and lender banks have submitted that debarring borrowers from accessing institutional finance is necessary to not only prevent the same persons from committing frauds in other banks, but also to proscribe banks from dealing with unscrupulous borrowers in public interest. Debarring a borrower under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrower for being untrustworthy and unworthy of credit by the banks. This Court has consistently held that an opportunity of a hearing ought to be provided before a person is put on a blacklist.

58. In *Erusian Equipment & Chemicals Ltd.* v. *State of W.B.*[23], the issue before this Court was whether a person is entitled to a notice to be heard before being blacklisted by the Government. This Court held that since blacklisting affects the privileges of the blacklisted person, fundamentals of fair play require that such a person be provided an opportunity of being heard : (SCC p. 75, para 20)

"*20*. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

59. In *Joseph Vilangandan* v. *Executive Engineer (PWD)*[24], the issue before the two-Judge Bench pertained to debarment of a government contractor from seeking any further contract with the Government without providing an opportunity of being heard. The material sentence of the notice there read as follows : (SCC p. 41, para 17)

"*17*. … 'You are therefore requested to show cause … why the work may not be arranged otherwise at your risk and loss, through other agencies *after debarring you as a defaulter*….' "

(emphasis in original)

This Court applied the position of law in *Erusian Equipment & Chemicals*[23] to hold that the Executive Engineer ought to have given the contractor adequate opportunity to represent against the proposed action of debarment.

60. In *Raghunath Thakur* v. *State of Bihar*[25], a two-Judge Bench of this Court held that since blacklisting entails civil consequences an order of blacklisting should be issued only after following the principles of natural justice : (SCC p. 230, para 4)

> "*4*. … Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has

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to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order."

61. In *Gorkha Security Services* v. *State (NCT of Delhi)*[26], the issue before this Court pertained to the form and content of a show-cause notice that is required to be served before blacklisting the noticee. A two-Judge Bench of this Court observed that that an order blacklisting a person is stigmatic. The relevant observation is extracted below : (SCC p. 115, para 16)

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

62. Classification of a borrower's account as fraud has the effect of preventing the borrower from accessing institutional finance for the purpose of business. It also entails significant civil consequences as it jeopardises the future of the business of the borrower. Therefore, the principles of natural justice necessitate giving an opportunity of a hearing before debarring the borrower from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds. The action of classifying an account as fraud not only affects the business and goodwill of the borrower, but also the right to reputation.

63. In *State of Maharashtra* v. *Public Concern for Governance Trust*[27], a two-Judge Bench of this Court held that a decision taken by any authority affecting the right to reputation of an individual has civil consequences. Therefore, in such situations the principles of natural justice would come into play. The Court held that any order or decision of the authority adversely affecting the personal reputation of an individual must be taken after following the principles of natural justice : (SCC p. 606, para 41)

> "*41*. It is thus amply clear that one is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an

individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review."

64. RBI and lender banks have relied on *Peerless General Finance & Investment Co. Ltd.* v. *RBI*[28], *Joseph Kuruvilla Vellukunnel* v. *RBI*[29] and *Internet & Mobile Assn. of India* v. *RBI*[30] to submit that the Master Directions on Frauds are akin to a statutory regulation and a decision on economic policy, which must be accorded a level of deference.

65. The competence of RBI to issue the Master Directions on Frauds is not a bone of contention in these appeals. RBI, in its estimation, has the power to determine and frame economic measures in the public interest to ensure the proper management of banking companies. The point however is that the implementation of a decision to secure the health of banking companies must comport with the due process of law. The civil consequences which follow upon a classification of a borrower's

account as fraud are serious and prejudicial to the interests of a borrower. Principles of fair play require that the borrower ought to be given an opportunity of being heard before classifying the account as fraud in accordance with the procedure laid down under the Master Directions on Frauds.

D.3. *No implied exclusion of audi alteram partem*

66. RBI and the lender banks have contended that the Master Directions on Frauds impliedly exclude the right to be heard. The objective of the Master Directions on Frauds is to ensure timely detection and reporting of cases of fraud to alert other banks and initiate criminal proceedings. The Directions contemplate an opportunity of hearing to a third party who is involved in the commission of fraudulent activity, but do not explicitly provide for hearing to a borrower. Thus, it is urged that hearing to the borrowers is excluded by necessary implication.

67. The Master Directions on Frauds do not expressly exclude a right of hearing to the borrowers before action to class their account as frauds is initiated. The principles of natural justice can be read into a statute or a notification where it is silent on granting an opportunity of a hearing to a party whose rights and interests are likely to be affected by the orders that may be passed.

68. In a decision of a three-Judge Bench of this Court in *Swadeshi Cotton Mills* v. *Union of India*[31], the issue was whether the Central Government was required to comply with the requirements of *audi alteram partem* before it took over the management of an industrial undertaking under Section 18-AA(1)(a) of the Industries (Development and Regulation) Act, 1951. R.S. Sarkaria, J.

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speaking for the majority consisting of himself and D.A. Desai, J. laid down the following principles of law : (SCC p. 689, para 44)

> "*44*. In short, the general principle — as distinguished from an absolute rule of uniform application — seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. *Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or*

appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. *In short, this rule of fair play 'must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands'. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications*. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(emphasis supplied)

69. The main point for consideration before this Court in *Swadeshi Cotton Mills*[31] was whether the use of the phrase "immediate action is necessary" under Section 18-AA(1)(a) of the IDR Act impliedly excluded the application of the *audi alteram partem* rule. Sarkaria, J. held that the expression "immediate action", construed in light of the overall context, object and reasons of the legislation, did not necessarily indicate an intention to exclude the requirement of prior hearing. The Court held that the use of the phrase does not exclude the duty to comply with the *audi alteram partem* rule : (SCC pp. 704-705, para 77)

"*77*. The *second* reason — which is more or less a facet of the *first* — for holding that *the mere use of the word "immediate" in the phrase "immediate action is necessary", does not necessarily and absolutely exclude the prior application of the* audi alteram partem *rule, is that immediacy or urgency requiring swift action is a situational fact having a direct nexus with the likelihood of adverse effect on fall in production. And, such likelihood and the urgency of action to prevent it, may vary greatly in degree. The words "likely to affect … production" used in Section 18-AA(1)(a) are flexible enough to comprehend a wide spectrum of situations ranging from the one where the likelihood of the happening of the apprehended event is imminent to that where it may be reasonably anticipated to happen sometime in the near future*. Cases of

extreme urgency where action under Section 18-AA(1)(a) to prevent

fall in production and consequent injury to public interest, brooks absolutely no delay, would be rare. In most cases, where the urgency is not so extreme, it is practicable to adjust and strike a balance between the competing claims of hurry and hearing."

(emphasis supplied)

Sarkaria, J. observed that that the owner of an undertaking is entitled to a fair hearing at the pre-decisional stage because the power of the Central Government under Section 18-AA(1)(a) to take over is far-reaching and adversely affects the rights and interests of owners.

70. In *Mangilal* v. *State of M.P.*[32], a two-Judge Bench of this Court held that the principles of natural justice need to be observed even if the statute is silent in that regard. In other words, a statutory silence should be taken to imply the need to observe the principles of natural justice where substantial rights of parties are affected : (SCC pp. 453-54, para 10)

> "*10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand*. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. *Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. … Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it*. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves."
>
> (emphasis supplied)

71. As a counter to the above legal position, RBI and lender banks have contended that the principles of natural justice could be excluded in cases where there is a requirement of promptitude or exigent action. In support of the submission, RBI and banks have relied upon *Ajit Kumar Nag* v. *Indian Oil Corpn. Ltd.*[33], which in turn relied on the Constitution Bench decision of this

Court in *Union of India* v. *Tulsiram Patel*[34]. In *Tulsiram Patel*[34], this Court observed that a right to a prior notice and an opportunity to be heard could be excluded if allowing for such a right would obstruct the taking of prompt action : (*Tulsiram Patel case*[34], SCC p. 479, para 101)

> "*101*. … So far as the *audi alteram partem* rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the *audi alteram partem* rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, …"

72. The borrowers have dwelt on Clause 8.9.6 of the Master Directions on Frauds according to which the entire exercise commencing from the detection of fraud by an individual bank up to the declaration of fraud by JLF is to be completed within six months. Clause 8.9.6 provides thus:

> "8.9.6 It may be noted that the overall time allowed for the entire exercise to be completed is six months from the date when the first member bank reported the account as RFA or fraud on the CRILC platform."

73. In *K.I. Shephard* v. *Union of India*[35], this Court was called upon to decide the validity of amalgamation schemes drawn by RBI, whereunder three private banks were amalgamated with nationalised banks. At the time of merger, some employees of the private banks were excluded from employment as their services were not taken over by the transferee banks in view of allegations of misconduct against them. While noting the fact that the entire process of amalgamation was statutorily required to be completed within 6 months, this Court held that the said time-frame provides scope for granting an

opportunity of hearing to the affected employees : (SCC p. 448, para 15)

> "*15*. … We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time-frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment."

74. The decision of this Court in *Swadeshi Cotton Mills*[31] and *K.I. Shephard*[35] demonstrates that the exigency of a situation is contextual. The Court must lean in favour of reading in the principles of natural justice when faced with a regulatory silence. Any exclusion must be confined to the

narrowest possible limits. The application of the requirement of a prior hearing could be excluded only in situations where importing it would have the effect of paralysing the entire process.

75. As mentioned above, Clause 8.9.6 of the Master Directions on Frauds contemplates that the procedure for the classification of an account as fraud has to be completed within six months. The procedure adopted under the Master Directions on Frauds provides enough time to the banks to deliberate before classifying an account as fraud. During this interval, the banks can serve a notice to the borrowers, and give them an opportunity to submit their reply and representation regarding the findings of the forensic audit report. Given the wide time-frames contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for banks to provide an adequate opportunity of a hearing to the borrowers before classifying their account as fraud.

76. The exclusion contemplated in the decision of this Court in *Tulsiram Patel*[34] would not be applicable because giving an opportunity of a hearing to the borrowers will not obstruct the taking of prompt action under the Master Directions on Frauds.

77. RBI and lender banks have further submitted that the requirement of natural justice is already fulfilled under the Master Directions on Frauds as the borrower is allowed to participate during the preparation of the forensic audit report. On the other hand, the

borrowers have submitted that the Master Directions do not expressly provide for participation of the borrowers during forensic audit report. It was also submitted that merely seeking inputs of borrowers during the preparation of the forensic audit report does not satisfy the requirements of the principles of natural justice as the borrowers should also be heard before classifying them as fraud.

78. In *Keshav Mills Co. Ltd.* v. *Union of India*[36], this Court was dealing with the issue of a takeover of a company by the Government under the IDR Act, 1951 after completion of a full investigation into the affairs of the company. The issue was whether the report of an investigating body appointed by an administrative authority should be made available to the person concerned before the authority takes a decision upon that report. While deciding to lay down a general principle, this Court observed that there may be certain situations where an investigation report is required to be furnished to the party concerned to make an effective representation about the proposed action : (SCC p. 393, para 21)

> "*21*. In our opinion it is not possible to lay down any general principle on the question as to whether the report of an investigating body or of an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. *The answer to this question also must always depend on the facts and circumstances of the case. It is not at all*

unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report. Whether the report should be furnished or not must therefore depend in every individual case on the merits of that case. We have no doubt that in the instant case non-disclosure of the report of the Investigating Committee has not caused any prejudice whatsoever to the appellants."

(emphasis supplied)

79. In *Swadeshi Cotton Mills*[31], this Court held that a company is entitled to an opportunity to explain the evidence collected against it and represent why the proposed action should not be taken : (SCC p. 707, para 85)

> "*85*. The contention does not appear to be well founded. Firstly,

this documentary evidence, at best, shows that the Company was in debt and the assets of some of its "units" had been hypothecated or mortgaged as security for those debts. Given an opportunity the Company might have explained that as a result of this indebtedness there was no likelihood of fall in production, which is one of the essential conditions in regard to which the Government must be satisfied before taking action under Section 18-AA(1)(a). *Secondly, what the rule of natural justice required in the circumstances of this case, was not only that the Company should have been given an opportunity to explain the evidence against it, but also an opportunity to be informed of the proposed action of take over and to represent why it be not taken*."

(emphasis supplied)

80. *Audi alteram partem* has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected. In *Tulsiram Patel*[34], this Court explained the wide amplitude of *audi alteram partem* : (SCC p. 476, para 96)

"96. *The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the* audi alteram partem *rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence*. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative inquiry."

(emphasis supplied)

81. *Audi alteram partem*, therefore, entails that an entity against

whom evidence is collected must : (*i*) be provided an opportunity to explain the evidence against it; (*ii*) be informed of the proposed action, and (*iii*) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds.

D.4. *Challenge to constitutional validity*

82. The borrowers have argued that the Master Directions on Frauds will have to be struck down as arbitrary and unconstitutional for conferring unguided and unbridled powers on banks. To counter the submission, RBI and lender banks have relied upon the decision in *Delhi Cloth & General Mills Co. Ltd.* v. *Union of India*[37] to submit that the provisions of the Master Directions on Frauds are not arbitrary as they have a reasonable nexus to the object sought to be achieved. It was further argued that the Courts should not interfere with and supplant their wisdom in an economic policy decision unless there is blatant perversity, arbitrariness, or mala fides.

83. RBI has the right to take all such measures as are necessary to protect the health of the banking system. Hence, the Master Directions on Frauds lay down the procedure for banks, who in case of a breach of loan agreements by the borrowers, can seek appropriate remedies by approaching law-enforcement agencies and debarring borrowers from accessing further institutional finance. However, any policy decision which contemplates serious civil consequences for any person will be open to challenge for being arbitrary if the principles of natural justice are not applied during the process.

84. In *E.P. Royappa* v. *State of T.N.*[38], this Court held that an arbitrary State action is violative of Article 14 of the Constitution. Again, in *Maneka Gandhi*[17] this Court reiterated that the principle of non-arbitrariness pervades Article 14. An administrative action can be tested for constitutional infirmities under Article 14 on four grounds : (*i*) unreasonableness or irrationality; (*ii*) illegality; (*iii*) procedural impropriety;[39] and (*iv*) proportionality. However,

the scope of such judicial review is limited to ascertaining the deficiency in the decision-making process, and not the correctness of the choice made by the administrator.[40]

85. Fairness in action requires that procedures which permit impairment of fundamental rights ought to be just, fair, and reasonable. The principles of natural justice have a universal application and constitute an important facet of procedural propriety envisaged under Article 14. The rule of *audi alteram partem* is recognised as being a part of the guarantee contained in Article 14. A Constitution Bench of this Court in *Tulsiram Patel*[34] has categorically held that violation of the principles of natural justice is a violation of Article 14. The Court held that any State action in breach of natural justice implicates a violation of Article 14 : (SCC p. 476, para 95)

> "*95.* The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus : violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14 : *therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter*. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially."
>
> (emphasis supplied)

86. In *Cantonment Board* v. *Taramani Devi*[41], a two-Judge Bench of this Court held that the rule of *audi alteram partem* is a part of Article 14. Similarly, in *DTC* v. *Mazdoor Congress*[42], this Court observed that the rule of *audi alteram partem* enforces the equality clause in Article 14. Therefore, any administrative action which violates the rule of *audi alteram partem* is arbitrary and violative of Article 14.

87. Administrative proceedings which entail significant civil consequences must be read consistent with the principles of natural

justice to meet the requirement of Article 14. Where possible, the rule of *audi alteram partem* ought to be read into a statutory rule to render it compliant with the principles of equality and non-arbitrariness envisaged under Article 14. The Master Directions on Frauds do not expressly provide the borrowers an opportunity of

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being heard before classifying the borrower's account as fraud. *Audi alteram partem* must then be read into the provisions of the Master Directions on Frauds.

88. In *Olga Tellis* v. *Bombay Municipal Corpn.*[43], a Constitution Bench of this Court was called upon to adjudge the validity of Section 314 of the Bombay Municipal Corporation Act, 1888. The provision enabled the Municipal Commissioner to remove, without notice, any object, structure or fixture which was set up in or upon any street. Y.V. Chandrachud, C.J. delivering the judgment of the Constitution Bench held that the impugned provision must be construed to ensure that the procedure contemplated is fair and reasonable. It was further held : (SCC pp. 580-81, para 44)

> "*44*. … What Section 314 provides is that the Commissioner **may**, without notice, cause an encroachment to be removed. It does not command that the Commissioner shall, without notice, cause an encroachment to be removed. Putting it differently, Section 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. *That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of this interpretation because it helps sustain the validity of the law. Reading Section 314 as containing a command not to issue notice before the removal of an encroachment will make the law invalid*."
>
> (emphasis supplied)

89. In *Union of India* v. *J.N. Sinha*[11], a two-Judge Bench of this Court held that an endeavour must be made to interpret a statutory provision consistent with the principles of natural justice : (SCC p. 461, para 8)

> "*8*. … *It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the*

statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the provision concerned the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

(emphasis supplied)

90. In *C.B. Gautam* v. *Union of India*[44], the question before a Constitution Bench of this Court was whether a show-cause notice must be issued to an intending purchaser and seller of property before making a compulsory purchase under Section 269-UD(1) of Chapter XX-C of the Income Tax Act, 1961. M.H. Kania, C.J. speaking for the Constitution Bench held that where the validity of a provision would be open to serious challenge for want of an opportunity of being heard, courts have read such a requirement into the provision. In *C.B. Gautam*[44], this Court read the principles of natural justice into the provisions of Chapter XX-C to save them from the vice of arbitrariness. The Constitution Bench held : (SCC p. 104, para 30)

"*30*. … Again, there is no express provision in Chapter XX-C barring the giving of a show-cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269-UD must be read into the provisions of Chapter XX-C. *There is nothing in the language of Section 269-UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice.*

The provision that when an order for purchase is made under Section 269-UD — *reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made*."

(emphasis supplied)

91. In *Sahara India (Firm) (1)* v. *CIT*[45], a two-Judge Bench of this Court was called upon to decide whether an opportunity of being heard has to be granted to an assessee before any direction could be issued under Section 142(2-A) of the Income Tax Act, 1961 for special audit of the accounts of the assessee. This Court held that since the exercise of power under Section 142(2-A) of the Income Tax Act leads to serious civil consequences for the assessee, the requirement of observing the principles of natural justice is to be read into the said provision.

92. In *Kesar Enterprises Ltd.* v. *State of U.P.*[46], the Court dealt with a challenge to the validity of Rule 633(7) of the Uttar Pradesh Excise Manual which allowed the imposition of a penalty for breach of the conditions of a bond without expressly issuing a show-cause notice. D.K. Jain, J. speaking on behalf of the two-Judge Bench held that a show-cause notice should be issued and an opportunity of being heard should be afforded before an Order under Rule 633(7) is made. The Court held that the rule would be open to challenge

for being violative of Article 14 of the Constitution unless the requirement of an opportunity to show cause is read into it. The Court observed : (SCC p. 743, paras 30 & 32)

"*30*. Having considered the issue, framed in para 16, on the touchstone of the aforenoted legal principles in regard to the applicability of the principles of natural justice, *we are of the opinion that keeping in view the nature, scope and consequences of direction under sub-rule (7) of Rule 633 of the Excise Manual, the principles of natural justice demand that a show-cause notice should be issued and an opportunity of hearing should be afforded to the person concerned before an order under the said Rule is made, notwithstanding the fact that the said Rule does not contain any express provision for the affected party being given an opportunity of being heard*.

* * *

32. In our view, therefore, *if the requirement of an opportunity to show cause is not read into the said Rule, an action thereunder*

would be open to challenge as violative of Article 14 of the Constitution of India on the ground that the power conferred on the competent authority under the provision is arbitrary."

(emphasis supplied)

93. It has been elucidated in the preceding paragraphs that the classification of a borrower's account as fraud in accordance with the procedure laid down in the Master Directions on Frauds entails significant civil consequences for the borrower. Since the Master Directions on Frauds do not expressly provide an opportunity of being heard to the borrower before classifying an account as fraud, the rule of *audi alteram partem* has to be read into the provisions of the said directions to save them from the vice of arbitrariness.

94. Before concluding, we also want to address the argument by the borrowers that the requirement of passing a reasoned order must be read into the Master Directions on Frauds. The borrowers also relied on *Jah Developers*[9] wherein it was held that a final decision of the Review Committee declaring the borrower as a "wilful defaulter" must be made by a reasoned order. We agree with this contention of the borrowers because : (*i*) a reasoned order allows an aggrieved party to demonstrate that the reasons which persuaded the authority to pass an adverse order against the interests of the aggrieved party are extraneous or perverse; and (*ii*) the obligation to record reasons acts as a check on the arbitrary exercise of the powers.[47] The reasons to be recorded need not be placed on the same pedestal as a judgment of a court. The reasons may be brief but they must comport with fairness by indicating a due application of mind.

95. In light of the legal position noted above, we hold that the rule of *audi alteram partem* ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of

the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of *audi alteram partem*. In the present batch of

appeals, this Court passed an ad interim order[4] restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision.

96. Lastly, the borrowers have argued that the Master Directions on Frauds suffer from manifest arbitrariness because they stipulate an opportunity of a hearing to the third parties, while denying the same to borrowers, who face significant civil consequences. Clause 8.12.5 of the Master Directions on Frauds provides that the banks have to satisfy themselves of the involvement of the third parties and provide them with an opportunity of being heard before reporting them to the Indian Banks' Association.

97. We are unable to accept this argument of the borrowers in light of the fact that the borrowers and the third parties stand on a different footing because : (*i*) the borrowers are the main perpetrators of fraud, while the third parties are merely facilitators; and (*ii*) it is the borrowers who face the significant civil consequences stipulated under Clauses 8.12.1 and 8.12.2, while the third-party service providers are merely referred to the Indian Banks' Association which maintains a caution list of such service providers. However, this view does not affect our conclusions in view of the discussion in the preceding paragraphs.

E. *Conclusion*

98. The conclusions are summarised below:

98.1. No opportunity of being heard is required before an FIR is lodged and registered.

98.2. Classification of an account as fraud not only results in reporting the crime to the investigating agencies, but also has other penal and civil consequences against the borrowers.

98.3. Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds results in serious civil consequences for the borrower.

98.4. Such a debarment under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. This Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted.

98.5. The application of *audi alteram partem* cannot be impliedly excluded under the Master Directions on Frauds. In view of the time-frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.

98.6. The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/JLF before their account is classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order.

98.7. Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, *audi alteram partem* has to be read into the provisions of the directions to save them from the vice of arbitrariness.

99. In the result, the judgment of the Division Bench of the High Court of Telangana dated 10-12-2020[1] is upheld. The judgments of the High Court of Telangana dated 22-12-2021[3] and 31-12-2021[6], and of the High Court of Gujarat dated 23-12-2021[8] are accordingly set aside. The civil appeals are disposed of. Writ Petition (C) No. 138 of 2022 is also disposed of in the above terms. There shall be no order as to costs.

100. Pending application(s), if any, shall stand disposed of.

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† Arising from the Judgment and Order in *Rajesh Agarwal* v. *RBI*, 2020 SCC OnLine TS 2021 (Telangana High Court, WP No. 19102 of 2019, dt. 10-12-2020) **[Affirmed]**

‡ Arising from the Judgment and Order in *Shree Saraiwwalaa Agrr Refineries Ltd.* v. *Union of India*, 2021 SCC OnLine TS 1816 (Telangana High Court, WP No. 22588 of 2019, dt. 22-12-2021) **[Reversed]**

†† Arising from the Judgment and Order in *Yashdeep Sharma* v. *RBI*, 2021 SCC OnLine TS 1852 (Telangana High Court, WP No. 23229 of 2021, dt. 31-12-2021) **[Reversed]**

†‡ Arising from the Judgment and Order in *Jayeshbhai Chandubhai Patel* v. *Bank of India* (Gujarat High Court, LPA No. 1047 of 2021, dt. 23-12-2021) sub nom *Mona Jignesh Acharya* v. *Bank of India* (Gujarat High Court, LPA No. 1043 of 2021, dt. 23-12-2021), 2021 SCC OnLine Guj 2811 **[Reversed]**

‡‡ Under Article 32 of the Constitution of India **[Allowed]**

[1] *Rajesh Agarwal* v. *RBI*, 2020 SCC OnLine TS 2021

[2] *SBI* v. *Rajesh Agarwal*, 2021 SCC OnLine SC 3453

[3] *Shree Saraiwwalaa Agrr Refineries Ltd.* v. *Union of India*, 2021 SCC OnLine TS 1816

[4] *Shree Saraiwwalaa Agrr Refineries Ltd.* v. *Union of India*, 2022 SCC OnLine SC 1905

[5] *Yashdeep Sharma* v. *RBI*, 2022 SCC OnLine SC 1907

[6] *Yashdeep Sharma* v. *RBI*, 2021 SCC OnLine TS 1852

[7] *Jayeshbhai Chandubhai Patel* v. *Bank of India*, 2021 SCC OnLine Guj 3025

[8] *Mona Jignesh Acharya* v. *Bank of India*, 2021 SCC OnLine Guj 2811

[9] *SBI* v. *Jah Developers (P) Ltd.*, (2019) 6 SCC 787 : (2019) 3 SCC (Civ) 412

[10] Master Circular on Wilful Defaulters, 2015.

[11] *Union of India* v. *J.N. Sinha*, (1970) 2 SCC 458

[12] *Union of India* v. *W.N. Chadha*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171

[13] *Id*, SCC p. 293, para 98.

[14] *Anju Chaudhary* v. *State of U.P.*, (2013) 6 SCC 384 : (2013) 4 SCC (Cri) 503

[15] *A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262; *St. Anthony's College* v. *Rev. Fr. Paul Petta*, 1988 Supp SCC 676 : 1989 SCC (L&S) 44; *Uma Nath Pandey* v. *State of U.P.*, (2009) 12 SCC 40 : (2010) 1 SCC (Cri) 501.

[16] *State of Orissa* v. *Binapani Dei*, AIR 1967 SC 1269

[17] *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248

[18] *Mohinder Singh Gill* v. *Chief Election Commr.*, (1978) 1 SCC 405

[19] *D.K. Yadav* v. *J.M.A. Industries Ltd.*, (1993) 3 SCC 259 : 1993 SCC (L&S) 723

[20] *Canara Bank* v. *V.K. Awasthy*, (2005) 6 SCC 321 : 2005 SCC (L&S) 833

[21] *Black's Law Dictionary*, 5th Edn. (1979).

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[23] *Erusian Equipment & Chemicals Ltd.* v. *State of W.B.*, (1975) 1 SCC 70

[24] *Joseph Vilangandan* v. *Executive Engineer (PWD)*, (1978) 3 SCC 36

[25] *Raghunath Thakur* v. *State of Bihar*, (1989) 1 SCC 229

[26] *Gorkha Security Services* v. *State (NCT of Delhi)*, (2014) 9 SCC 105

[27] *State of Maharashtra* v. *Public Concern for Governance Trust*, (2007) 3 SCC 587

[28] *Peerless General Finance & Investment Co. Ltd.* v. *RBI*, (1992) 2 SCC 343

[29] *Joseph Kuruvilla Vellukunnel* v. *RBI*, AIR 1962 SC 1371

[30] *Internet & Mobile Assn. of India* v. *RBI*, (2020) 10 SCC 274

[31] *Swadeshi Cotton Mills* v. *Union of India*, (1981) 1 SCC 664

[32] *Mangilal* v. *State of M.P.*, (2004) 2 SCC 447 : 2004 SCC (Cri) 1085

[33] *Ajit Kumar Nag* v. *Indian Oil Corpn. Ltd.*, (2005) 7 SCC 764 : 2005 SCC (L&S) 1020

[34] *Union of India* v. *Tulsiram Patel*, (1985) 3 SCC 398 : 1985 SCC (L&S) 672

[35] *K.I. Shephard* v. *Union of India*, (1987) 4 SCC 431 : 1987 SCC (L&S) 438

[36] *Keshav Mills Co. Ltd.* v. *Union of India*, (1973) 1 SCC 380

[37] *Delhi Cloth & General Mills Co. Ltd.* v. *Union of India*, (1983) 4 SCC 166

[38] *E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165

[39] *State of A.P.* v. *McDowell & Co.*, (1996) 3 SCC 709; *Om Kumar* v. *Union of India*, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039

[40] *United Commercial Bank* v. *P.C. Kakkar*, (2003) 4 SCC 364 : 2003 SCC (L&S) 468

[41] *Cantonment Board* v. *Taramani Devi*, 1992 Supp (2) SCC 501

[42] *DTC* v. *Mazdoor Congress*, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213

[43] *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545

[*] **Ed.** : The matter between two asterisks has been emphasised in original.

[44] *C.B. Gautam* v. *Union of India*, (1993) 1 SCC 78

[45] *Sahara India (Firm) (1)* v. *CIT*, (2008) 14 SCC 151

[46] *Kesar Enterprises Ltd.* v. *State of U.P.*, (2011) 13 SCC 733

[47] *Kranti Associates (P) Ltd.* v. *Masood Ahmed Khan*, (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852

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(1990) 4 Supreme Court Cases 594 : 1990 Supreme Court Cases (Cri) 669 : 1991 Supreme Court Cases (L&S) 242 : 1990 SCC OnLine SC 406

(BEFORE SABYASACHI MUKHARJI, C.J. AND M.H. KANIA, K. JAGANNATHA SHETTY, K.N. SAIKIA AND S.C. AGRAWAL, JJ.)

S.N. MUKHERJEE . . Appellant;

Versus

UNION OF INDIA . . Respondent.

Civil Appeal No. 417 of 1984[†], decided on August 28, 1990

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Administrative Law — Natural justice — Recording of reasons — Authority exercising quasi-judicial function must record reasons for its decision irrespective of whether the decision is subject to appeal, revision or judicial review — Reasons should be clear and explicit though may not be elaborate — This is one of the embodied rules of natural justice — Requirement is greater at original stage but at appellate or revisional stage while affirming the original decision such authority need not give separate reasons if it agrees with the reasons in the impugned order — Rule inoperative where statute dispenses with the requirement expressly or by necessary implication

Administrative Law — Natural justice — Object and basic principles of — Applicability — Not being embodied rules the extent of their application, held, depends on the governing statutory framework — May be excluded expressly or by necessary implication

Army Act, 1950 — Sections 108, 129, 131, 153, 158, 160, 162 — Army Rules, 1954 — Rules 60, 61, 62, 65, 66, 67, 69, 70, 71, 105 — Held, no reasons are required to be recorded at the stage of recording of findings and sentence by the court martial or on confirmation of the findings and sentence of the court martial by the confirming authority or dismissal of post confirmation petition by Central Government

Army Rules, 1954 — Rules 60 to 67 and 105 — Role of judge-advocate during course of trial at a general court martial

Constitution of India — Articles 32, 226, 136(2) and 227(4) — Decision of tribunal/court constituted under law relating to Armed Forces such as

Army Act and Army Rules — Held, open to challenge under Article 32 or 226 but not under Article 136 or 227

Army Act, 1950 — Section 164 — Confers no right to make representation to confirming authority before confirmation of findings and sentence recorded by court martial — Only a post confirmation right is conferred under sub-section (2) of Section 164 — But if a representation is made at the pre-confirmation stage, confirming authority is expected to consider the same — Comparative scope of sub-sections (1) and (2) of Section 164

Army Act, 1950 — Sections 52(f), 63 — Alternative charges — First charge in respect of offence under Section 52(f), second charge alternative to the first in respect of offence under Section 63 and the third charge also in respect of offence under Section 63 — Appellant found guilty of the first and third charges — Second charge being alternative to the first, appellant could be held guilty of either of the first or the second charge and not of both the charges at the same time — Appellant having been found guilty of the first charge, he was rightly acquitted of the second charge — Hence acquittal of appellant in respect of the second charge will not entitle him to acquittal in respect of the first charge which was identical in nature — Service Law — Departmental enquiry — Charges

(Para 55)

Held :

Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions must record the reasons for its decision. Such a decision

is subject to the appellate jurisdiction of the Supreme Court under Article 136 as well as the supervisory jurisdiction of the High Courts under Article 227 and the reasons, if recorded, would enable the Supreme Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations are the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. As contrasted with the ordinary courts of law and tribunals and authorities exercising judicial functions where the Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency, an executive officer generally looks at things from the standpoint of policy and expediency. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions irrespective of the fact whether the decision is subject

to appeal, revision or judicial review.

(Paras 40, 35 and 36)

However, it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

(Para 36)

The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". The requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principle of natural justice, therefore, it must be held that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.

(Para 39)

The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

(Para 39)

Harinagar Sugar Mills Ltd. v. *Shyam Sundar Jhunjhunwala*, AIR 1961 SC 1669: (1962) 2 SCR 339: (1961) 31 Com Cas 387; *Madhya Pradesh Industries Ltd.* v.

Union of India, AIR 1966 SC 671: (1966) 1 SCR 466; *Mahabir Prasad Santosh Kumar* v. *State of U.P.*, (1969) 3 SCC 868: (1970) 3 SCR 40; *Tara Chand Khatri* v. *Municipal Corporation of Delhi*, (1977) 1 SCC 472: 1977 SCC (L&S) 151: (1972) 2 SCR 198; *Raipur Development Authority* v. *Chokhamal Contractors*, (1989) 2 SCC 721; *A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262: (1970) 1 SCR 457, *relied on*

Bhagat Raja v. *Union of India*, AIR 1967 SC 1606: (1967) 3 SCR 302; *Mahabir Prasad Santosh Kumar* v. *State of U.P.*, (1970) 1 SCC 764: (1971) 1 SCR 201; *Woolcombers of India Ltd.* v. *Woolcombers Workers Union*, (1974) 3 SCC 318: 1974 SCC (L&S) 551: (1974) 1 SCR 504; *Siemens Engineering and Manufacturing Co. of India Ltd.* v. *Union of India*, (1976) 2 SCC 981: 1976 Supp SCR 489; *Phelps Dodge Corporation* v. *National Labour Relations Board*, (1940) 85 L ed 1271; *Securities and Exchange Commission* v. *Chenery Corporation*, (1942) 87 L ed 626; *John T. Dunlop* v. *Walter Bachowski*, (1975) 44 L ed 2d 377; *Regina* v. *Gaming Board For Great Britain*, Ex parte Benaim and Khaida, (1970) 2 QB 417: (1970) 2 All ER 528; *McInnes* v. *Onslow-Fane*, (1978) 1 WLR 1520: (1978) 3 All ER 211; *Breen* v. *Amalgamated Engineering Union*, (1971) 2 QB 175: (1971) 1 All ER 1148; *Alexander Machinery (Dudley) Ltd.* v. *Crabtree*, (1974) 1 CR 120; *Regina* v. *Immigration Appeal Tribunal Ex parte Khan (Mahmud)*, 1983 QB 790: (1983) 2 All ER 420; *Pure Spring Co. Ltd.* v. *Minister of National Revenue*, (1947) 1 DLR 501; Re R.D.R. Construction Ltd. and Rent Review Commission, (1983) 139 DLR (3d) 168; Re Yarmouth Housing Ltd. and Rent Review Commission, (1983) 139 DLR (3d) 544; *Osmond* v. *Public Service Board of New South Wales*, (1985) 3 NSWLR 447; *Public Service Board of New South Wales* v. *Osmond*, (1986) 63 ALR 559; *R.* v. *Deputy Industrial Injuries Commissioner ex p. Moore*, (1965) 1 QB 456: (1965) 1 All ER 81; *Mahon* v. *Air New Zealand Ltd.*, 1984 AC 648: (1984) 1 All ER 201, *referred to*

(2) It has therefore to be seen whether the Army Act, 1950 and the Army Rules, 1954 expressly or by necessary implication dispense with the requirement of recording reasons. In so doing consideration must be kept for the special provisions in the Constitution with regard to the Armed Forces, like Articles 33, 136(2) and 227(4).

(3) A perusal of the provisions of the Army Act and Rules show that at the stage of recording of findings and sentence the court martial is not required to record its reasons. The judge-advocate plays an important role during the course of trial at a general court martial and he is enjoined to maintain an impartial position. The court martial records its findings after the judge-advocate has summed up the evidence and has given his opinion upon the legal bearing of the case. The members of the court have to express their opinion as to the finding by word of mouth on each charge separately and the finding on each charge is to be recorded simply as a finding of "guilty" or of "not guilty". It is also required that the sentence should be announced forthwith in open court. Rule 66(1) however requires reasons to be recorded for its recommendation in cases where the court makes a recommendation to mercy. There is no such requirement in other provisions

relating to recording of findings and sentence.

(Para 44)

Reasons are also not required to be recorded for an order passed by the confirming authority confirming the findings and sentence recorded by the court martial. The confirmation of the findings and sentence is an integral part of the proceedings of a court martial and before the findings and sentence of a court martial are confirmed the same are examined by the deputy or assistant judge-advocate general of the command which is intended as a check on the

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legality and propriety of the proceedings as well as the findings and sentence of the court martial. Moreover, in Section 162 an express provision has been made for recording of reasons based on merits of the case in relation to the proceedings of the summary court martial in cases where the said proceedings are set aside or the sentence is reduced and no other requirement for recording of reasons is laid down either in the Act or in the Rules in respect of proceedings for confirmation. The only inference that can be drawn from Section 162 is that reasons have to be recorded only in cases where the proceedings of a summary court martial are set aside or the sentence is reduced and not when the findings and sentence are confirmed.

(Paras 48 and 46)

So also reasons are not required to be recorded for the order passed by the Central Government dismissing the post-confirmation petition since the considerations which apply at the stage of recording of findings and sentence by the court martial and at the stage of confirmation of findings and sentence of the court martial by the confirming authority are equally applicable at this stage. As reasons are not required to be recorded at the first two stages referred to above, the said requirement cannot, be insisted upon at the stage of consideration of post-confirmation petition under Section 164(2) of the Act.

(Paras 48 and 47)

Som Datt Datta v. *Union of India*, AIR 1969 SC 414: (1969) 2 SCR 177: 1969 Cri LJ 663, *affirmed*

(4) However, even though the appellate jurisdiction of the Supreme Court and power of superintendence of the High Court are excluded under Articles 136(2) and 227(4) respectively in respect of the Armed Forces, the Supreme Court under Article 32 and the High Courts under Article 226 have the power of judicial review in respect of proceedings of courts martial and the proceedings subsequent thereto and can grant appropriate relief if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record.

(Para 42)

(5) A person aggrieved by the finding or sentence of a court martial has no right to make a representation before the confirmation of the same by the confirming authority. Insofar as the finding and sentence of the court martial is concerned the only remedy that is available to a person aggrieved by the same is under sub-section (2) and the said remedy can be invoked only after the finding or sentence has been confirmed by the confirming authority and not before the confirmation of the same. Rule 147 of the Army Rules also lends support to this view. Hence the appellant cannot make a grievance about non-supply of the copies of the proceedings of the court martial and consequent denial of his right to make a representation to the confirming authority against the findings and sentence of the court martial before the confirmation of the said finding and sentence. However, in case such a representation is made by a person aggrieved by the finding or sentence of a court martial it is expected that the confirming authority shall give due consideration to the same while confirming the finding and sentence of the court martial.

(Para 53)

In the present case the representation submitted by the appellant to the confirming authority was not considered by the confirming authority when it passed the order of confirmation. It appears that due to some communication

gap within the department the representation submitted by the appellant did not reach the confirming authority till the passing of the order of confirmation. Since the appellant had no legal right to make a representation at that stage the non-consideration of the same by the confirming authority before the passing of the order of confirmation would not vitiate the said order.

(Para 54)

(6) In the present case out of the three charges levelled against the appellant, the second charge was by way of alternative to the first charge. The appellant could be held guilty of either of these charges and he could not be guilty of both the charges at the same time. Since the appellant had been found guilty of the first charge he was acquitted of the second charge. There is, therefore, no infirmity in the court martial having found the appellant guilty of the first charge while holding him not guilty of the second charge.

(Para 55)

On the facts it cannot be said that the findings recorded by the court martial on the three charges against the appellant were based on no evidence and were perverse.

(Paras 57 to 59)

Appeal dismissed R-M/10166/CRLA

Advocates who appeared in this case :

A.K. Ganguli, Senior Advocate (A. Sharan, Advocate, with him) for the Appellant;

Kapil Sibal, Additional Solicitor General (Raju Ramachandran, Rajeev Dhavan, C.V. Subba Rao and Ms Sushma Suri, Advocates, with him) for the Respondents.

T. Prasad, Advocate, for the Secretary, Ministry of Defence.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J.— This appeal, by special leave, is directed against the order dated August 12, 1981, passed by the High Court of Delhi dismissing the writ petition filed by the appellant. In the writ petition the appellant had challenged the validity of the finding and the sentence recorded by the General Court Martial on November 29, 1978, the order dated May 11, 1979, passed by the Chief of Army Staff confirming the findings and the sentence recorded by the General Court Martial and the order dated May 6, 1980, passed by the Central Government dismissing the petition filed by the appellant under Section 164(2) of the Army Act, 1950 (hereinafter referred to as 'the Act').

2. The appellant held a permanent commission, as an officer, in the regular army and was holding the substantive rank of Captain. He was officiating as a Major. On December 27, 1974, the appellant took over as the Officer Commanding of 38 Coy ASC(Sup) Type 'A' attached to the Military Hospital, Jhansi. In August 1975, the appellant had gone to attend a training course and he returned in the first week of November 1975. In his absence Captain G.C. Chhabra was the officer commanding the unit of the appellant. During this period Captain Chhabra submitted a Contingent Bill dated September 25, 1975 for Rs 16,280 for winter liveries of the depot civilian chowkidars and sweepers. The said Contingent Bill was returned by the Controller of Defence Accounts (CDA) Meerut with certain objections. Thereupon the appellant submitted a

fresh Contingent Bill dated December 25, 1975 for a sum of Rs

7029.57. In view of the difference in the amounts mentioned in the two Contingent Bills, the CDA reported the matter to the headquarters for investigation and a Court of Enquiry blamed the appellant for certain lapses.

3. The said report of the Court of Enquiry was considered by the General Officer Commanding, M.P., Bihar and Orissa Area, who, on January 7, 1977 recommended that 'severe displeasure' (to be recorded) of the General Officer Commanding-in-Chief of the Central Command be awarded to the appellant. The General Officer Commanding-in-Chief, Central Command did not agree with the said opinion and by order dated August 26, 1977, directed the disciplinary action be taken against the appellant for the lapses.

4. In view of the aforesaid order passed by the General Officer Commanding-in-Chief, Central Command, a charge-sheet dated July 20, 1978, containing three charges was served on the appellant and it was directed that he be tried by General Court Martial. The first charge was in respect of the offence under Section 52(*f*) of the Act, i.e. doing a thing with intent to defraud, the second charge was alternative to the first charge and was in respect of offence under Section 63 of the Act, i.e. committing an act prejudicial to good order and military discipline and the third charge was also in respect of offence under Section 63 of the Act.

5. The appellant pleaded not guilty to the charges. The prosecution examined 22 witnesses to prove the charges. The General Court Martial, on November 29, 1978, found the appellant not guilty of the second charge but found him guilty of the first and the third charge and awarded the sentence of dismissal from service. The appellant submitted a petition dated December 18, 1978, to the Chief of Army Staff wherein he prayed that the findings and the sentence of the General Court Martial be not confirmed. The findings and sentence of the General Court Martial were confirmed by the Chief of the Army Staff by his order dated May 11, 1979. The appellant, thereafter, submitted a post-confirmation petition under Section 164(2) of the Act. The said petition of the appellant was rejected by the Central Government by order dated May 6, 1980. The appellant thereupon filed the writ petition in the High Court of Delhi. The said writ petition was dismissed, in limine, by the High Court by order dated August 12, 1981. The appellant approached this Court for grant of special leave to appeal against the said order of the Delhi High Court. By order dated January 24, 1984, special leave to appeal was granted by this Court. By the said order it was directed that the appeal be listed for final hearing before the Constitution Bench. The

said order does not indicate the reason why the appeal was directed to be heard by the Constitution Bench. The learned counsel for the appellant has stated that this direction has been given by this Court for the reason that the appeal involves the question as to whether it was incumbent for the Chief of the Army Staff, while confirming the findings and the sentence of the General Court Martial, and for the Central Government, while rejecting the post-confirmation petition of the appellant, to record their reasons for the orders passed by them. We propose to deal with this question first.

6. It may be mentioned that this question has been considered by this Court in *Som Datt Datta* v. *Union of India*[1]. In that case it was contended before this Court that the order of the Chief of Army Staff confirming the proceedings of the court martial under Section 164 of the Act was illegal since no reason had been given in support of the order by the Chief of the Army Staff and that the Central Government had also not given any reasons while dismissing the appeal of the petitioner in that case under Section 165 of the Act and that the order of the Central Government was also illegal. This contention was negatived. After referring to the provisions contained in Sections 164, 165 and 162 of the Act this Court pointed out that while Section 162 of the Act expressly provides that the Chief of Army Staff may "for reasons based on the merits of the case" set aside the proceedings or reduce the sentence to any other sentence which the court might have passed, there is no express obligation imposed by Sections 164 and 165 of the Act on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the court martial. This Court observed that no other section of the Act or any of the rules made therein had been brought to its notice from which necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority. This Court did not accept the contention that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is a general principle or a rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.

7. Shri A.K. Ganguli has urged that the decision of this Court in *Som Datt Datta case*[1] to the extent it holds that there is no general principle or rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision needs reconsideration inasmuch as it is not in consonance with the other decisions of this

Court. In support of this submission Shri Ganguli has placed reliance on the decisions of this Court in *Bhagat Raja* v. *Union of India*[2], *Mahabir Prasad*

Santosh Kumar v. *State of U.P.*[3], *Woolcombers of India Ltd.* v. *Woolcombers Workers Union*[4] and *Siemens Engineering & Manufacturing Co. of India Limited* v. *Union of India*[5].

8. The learned Additional Solicitor General has refuted the said submission of Shri Ganguli and has submitted that there is no requirement in law that reasons be given by the confirming authority while confirming the finding or sentence of the court martial or by the Central Government while dealing with the post-confirmation petition submitted under Section 164 of the Act and that the decision of this Court in *Som Datt Datta case*[1] in this regard does not call for reconsideration.

9. The question under consideration can be divided into two parts:

(*i*) Is there any general principle of law which requires an administrative authority to record the reasons for its decision; and

(*ii*) If so, does the said principle apply to an order confirming the findings and sentence of a court martial and post-confirmation proceedings under the Act?

10. On the first part of the question there is divergence of opinion in the common law countries. The legal position in the United States is different from that in other common law countries.

11. In the United States the courts have insisted upon recording of reasons for its decision by an administrative authority on the premise that the authority should give clear indication that it has exercised the discretion with which it has been empowered because "administrative process will best be vindicated by clarity in its exercise". *(Phelps Dodge Corporation* v. *National Labour Relations Board*[6].) The said requirement of recording of reasons has also been justified on the basis that such a decision is subject to judicial review and "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review" and that "the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained". (*Securities and Exchange Commission* v. *Chenery Corporation*[7].) In *John T. Dunlop* v. *Walter Bachowski*[8] it has been

observed that a statement of reasons serves purposes other than judicial review inasmuch as the reasons promotes thought by the authority and compels it to cover the relevant points and eschew irrelevancies and assures careful administrative consideration. The Federal Administrative Procedure Act, 1946 which

prescribed the basic procedural principles which are to govern formal administrative procedures contained an express provision [Section 8 (*b*)] to the effect that all decisions shall indicate a statement of findings and conclusions as well as reasons or basis therefor upon all the material issues of fact, law or discretion presented on the record. The said provision is now contained in Section 557(*c*) of Title 5 of the United States Code (1982 edition). Similar provision is contained in the State statutes.

12. In England the position at common law is that there is no requirement that reasons should be given for its decision by the administrative authority. (See : *Regina* v. *Gaming Board for Great Britain, Ex parte Benaim and Khaida*[9] and *McInnes* v. *Onslow-Fane*[10].) There are, however, observations in some judgments wherein the importance of reasons has been emphasised. In his dissenting judgment in *Breen* v. *Amalgamated Engineering Union*[11] Lord Denning M.R., has observed that "the giving of reasons is one of the fundamentals of good administration."

13. In *Alexander Machinery (Dudley) Ltd.* v. *Crabtree*[12] Sir John Donaldson, as President of the National Industrial Relations Court, has observed that "failure to give reasons amounts to a denial of justice".

14. In *Regina* v. *Immigration Appeal Tribunal Ex parte Khan (Mahmud)*[13] Lord Lane, C.J. while expressing his reservation on the proposition that any failure to give reasons means a denial of justice, has observed : (QB p. 794)

> "A party appearing before a tribunal is entitled to know, either expressly stated by the tribunal or inferentially stated, what it is to which the tribunal is addressing its mind."

15. The Committee on Ministers' Powers (Donoughmore Committee) in its report submitted in 1932, recommended that "any party affected by a decision should be informed of the reasons on which the decision is based" and that "such a decision should be in the form of a reasoned document available to the parties affected". (p. 100) The Committee on Administrative Tribunals and Enquiries (Franks Committee) in its report

submitted in 1957 recommended that "decisions of tribunals should be reasoned and as full as possible". The said Committee has observed : (para 98)

> "Almost all witnesses have advocated the giving of reasoned decisions by tribunals. We are convinced that if tribunal proceedings are to be fair to the citizen reasons should be given to the fullest

practicable extent. A decision is apt to be better if the reasons for it have to be set out in writing because the reasons are then more likely to have been properly thought out. Further, a reasoned decision is essential in order that, where there is a right of appeal, the applicant can assess whether he has good grounds of appeal and know the case he will have to meet if he decides to appeal."

16. The recommendations of the Donoughmore Committee and the Franks Committee led to the enactment of the Tribunals and Enquiries Act, 1958 in United Kingdom. Section 12 of that Act prescribed that it shall be the duty of the tribunal or Minister to furnish a statement, either written or oral, of the reasons for the decision if requested, on or before the giving of notification of the decision to support the decision. The said Act has been replaced by the Tribunals and Enquiries Act, 1971 which contains a similar provision in Section 12. This requirement is, however, confined, in its applications to tribunals and statutory authorities specified in Schedule I to the said enactment. In respect of the tribunals and authorities which are not covered by the aforesaid enactment, the position, as prevails at common law, applies. The Committee of Justice in its Report, *Administration under Law*, submitted in 1971, has expressed the view:

> "No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

17. The law in Canada appears to be the same as in England. In *Pure Spring Co. Ltd.* v. *Minister of National Revenue*[14] it was held that when a Minister makes a determination in his discretion he is not required by law to give any reasons for such a determination. In some recent decisions, however, the courts have recognised that in certain situations there would be an implied duty to state the reasons or grounds for a decision. (See : *Re R.D.R. Construction Ltd. and Rent Review Commission*[15] and *Re Yarmouth Housing Ltd. and Rent Review Commission*[16].) In the Province of Ontario the Statutory Powers

Procedure Act, 1971 was enacted which provided that "a tribunal shall give its final decision, if any, in any proceedings in writing and shall give reasons in writing therefor if requested by a party". (Section 17) The said Act has now been replaced by the Statutory Powers and Procedure Act, 1980, which contains a similar provision.

18. The position at common law is no different in Australia. The Court of Appeal of the Supreme Court of New South Wales in *Osmond* v. *Public Service Board of New South Wales*[17] had held that the common

law requires those entrusted by statute with the discretionary power to make decisions which will affect other persons to act fairly in the performance of their statutory functions and normally this will require an obligation to state the reasons for their decisions. The said decision was overruled by the High Court of Australia in *Public Service Board of New South Wales* v. *Osmond*[18] and it has been held that there is no general rule of the common law, or principle of natural justice, that requires reasons to be given for administrative decisions, even decisions which have been made in the exercise of a statutory discretion and which may adversely affect the interests or defeat the legitimate or reasonable expectations, of other persons. Gibbs, C.J. in his leading judgment, has expressed the view that "the rules of natural justice are designed to ensure fairness in the making of a decision and it is difficult to see how the fairness of an administrative decision can be affected by what is done after the decision has been made". The learned Chief Justice has, however, observed that "even assuming that in special circumstances natural justice may require reasons to be given, the present case is not such a case". (p. 568) Deane J., gave a concurring judgment, wherein after stating that "the exercise of a decision-making power in a way which adversely affects others is less likely to be, or appear to be, arbitrary if the decision maker formulates and provides reasons for his decision", the learned Judge has proceeded to hold that "the stage has not been reached in this country where it is a general prima facie requirement of the common law rules of natural justice or procedural fair play that the administrative decision maker, having extended to persons who might be adversely affected by a decision an adequate opportunity of being heard, is bound to furnish reasons for the exercise of a statutory decision-making power". (p. 572). The learned Judge has further observed that the common law rules of natural justice or procedural fair play are neither standardized

nor immutable and that their content may vary with changes in contemporary practice and standards. In view of the statutory developments that have taken place in other countries to which reference was made by the Court of Appeal, Deane J. has observed that the said developments "are conducive to an environment within which the courts should be less reluctant than they would have been in times past to discern in statutory provisions a legislative intent that the particular decision maker should be under a duty to give reasons". (p. 573)

19. This position at common law has been altered by the Commonwealth Administrative Decisions (Judicial Review) Act, 1977. Section 13 of the said Act enables a person who is entitled to apply for review of the decision before the Federal Court to request the decision

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maker to furnish him with a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision and on such a request being made the decision maker has to prepare the statement and furnish it to the persons who made the request as soon as practicable and in any event within 28 days. The provisions of this Act are not applicable to the classes of decisions mentioned in Schedule I to the Act. A similar duty to give reasons has also been imposed by Sections 28 and 37 of the Commonwealth Administrative Appeals Tribunal Act, 1975.

20. In India the matter was considered by the Law Commission in the Fourteenth Report relating to reform in Judicial Administration. The Law Commission recommended : (Vol. II, p. 694)

> "In the case of administrative decisions provision should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate writs."

21. No law has, however, been enacted in pursuance of these recommendations, imposing a general duty to record the reasons for its decision by an administrative authority though the requirement to give reasons is found in some statutes.

22. The question as to whether an administrative authority should record the reasons for its decision has come up for consideration before this Court in a number of cases.

23. In *Harinagar Sugar Mills Ltd.* v. *Shyam Sundar Jhunjhunwala*[19] a

Constitution Bench of this Court, while dealing with an order passed by the Central Government in exercise of its appellate powers under Section 111(3) of the Companies Act, 1956 in the matter of refusal by a company to register the transfer of shares, has held that there was no proper trial of the appeals before the Central Government since no reasons had been given in support of the order passed by the Deputy Secretary who heard the appeals. In that case it has been observed : (SCR p. 357)

> "If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under Article 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order."

24. In *Madhya Pradesh Industries Ltd.* v. *Union of India*[20] the order passed by the Central Government dismissing the revision petition under

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Rule 55 of the Mineral Concession Rules, 1960, was challenged before this Court on the ground that it did not contain reasons. Bachawat, J., speaking for himself and Mudholkar, J., rejected this contention on the view that the reason for rejecting the revision application appeared on the face of the order because the Central Government had agreed with the reasons given by the State Government in its order. The learned Judges did not agree with the submission that omission to give reasons for the decision is of itself a sufficient ground for quashing it and held that for the purpose of an appeal under Article 136 orders of courts and tribunals stand on the same footing. The learned Judges pointed out that an order of court dismissing a revision application often gives no reasons but this is not a sufficient ground for quashing it and likewise an order of an administrative tribunal rejecting a revision application cannot be pronounced to be invalid on the sole ground that it does not give reasons for the rejection. The decision in *Harinagar Sugar Mills case*[19] was distinguished on the ground that in that case the Central Government had reversed the decision appealed against without giving any reasons and the record did not disclose any apparent ground for the reversal. According to the learned Judges there is a vital difference between an order of reversal and an order of affirmance. Subba Rao, J., as he then was, did not concur with this view and found that the order of the Central Government was vitiated as it did not disclose any reasons for rejecting the revision application. The learned Judge has

observed : (SCR pp. 472-73)

> "In the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimize arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal."
>
> "...If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuses of power. But, if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard."
>
> "...There is an essential distinction between a court and an administrative tribunal. A Judge is trained to look at things

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objectively, uninfluenced by considerations of policy or expediency; but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional court agrees with the reasoned judgment of the subordinate court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons."

25. With reference to an order of affirmance the learned Judge

observed that where the original tribunal gives reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons and that what is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal.

26. This matter was considered by a Constitution Bench of this Court in *Bhagat Raja case*[2] where also the order under challenge had been passed by the Central Government in exercise of its revisional powers under Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 read with Rules 54 and 55 of the Mineral Concession Rules, 1960. Dealing with the question as to whether it was incumbent on the Central Government to give any reasons for its decision on review this Court has observed : (SCR p. 309)

> "The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected", or "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal."

27. This Court has referred to the decision in *Madhya Pradesh Industries case*[20] and the observations of Subba Rao, J., referred to above, in that decision have been quoted with approval. After taking note of the observations of Bachawat, J. in that case, the learned Judges have held : (SCR p. 315)

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> "After all a tribunal which exercises judicial or quasi-judicial powers can certainly indicate its mind as to why it acts in a particular way and when important rights of parties of far-reaching consequence to them are adjudicated upon in a summary fashion, without giving a personal hearing where proposals and counter-proposals are made and examined, the least that can be expected is that the tribunal should tell the party why the decision is going against him in all cases where the law gives a further right of

appeal."

28. Reference has already been made to *Som Datt Datta case*[1] wherein a Constitution Bench of this Court has held that the confirming authority, while confirming the findings and sentence of a court martial, and the Central Government, while dealing with an appeal under Section 165 of the Act, are not required to record the reasons for their decision and it has been observed that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, it could not be said that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision. In that case the court was primarily concerned with the interpretation of the provisions of Act and the Army Rules, 1954. There is no reference to the earlier decisions in *Harinagar Sugar Mills case*[19] and *Bhagat Raja case*[2] wherein the duty to record reasons was imposed in view of the appellate jurisdiction of this Court and the supervisory jurisdiction of the High Court under Articles 136 and 227 of the Constitution of India respectively.

29. In *Travancore Rayon Ltd.* v. *Union of India*[21] this Court has observed: (SCR p. 46 : SCC p. 874, para 11)

> "The court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

30. In *Mahabir Prasad Santosh Kumar* v. *State of U.P.* [3] the District Magistrate had cancelled the licence granted under the U.P. Sugar Dealers' Licensing Order, 1962 without giving any reason and the State Government had dismissed the appeal against the said order of the District Magistrate without recording the reasons. This Court has held: (SCR pp. 204-05 : SCC p. 768, paras 6 and 7)

> "The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the

rights of the aggrieved party without giving reasons is a negation of the rule of law.

"Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just."

31. In *Woolcombers of India Ltd. case*[4] this Court was dealing with an award of an Industrial Tribunal. It was found that the award stated only the conclusions and it did not give the supporting reasons. This Court has observed: (SCR p. 507: SCC pp. 320-21, para 5)

"The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi-judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the court."

32. In *Siemens Engineering & Manufacturing Co. of India Limited case*[5] this Court was dealing with an appeal against the order of the Central Government on a revision application under the Sea Customs Act, 1878. This Court has laid down : (SCR pp. 495-96 : SCC pp. 986-87, para 6)

"It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons... If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with

the proliferation of administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

33. *Tara Chand Khatri* v. *Municipal Corporation of Delhi*[22] was a case where an inquiry was conducted into charges of misconduct and the disciplinary authority, agreeing with the findings of the Inquiry Officer, had imposed the penalty of dismissal. The said order of dismissal was challenged on the ground that the disciplinary authority had not given its reasons for passing the order. The said contention was negatived by this Court and distinction was drawn between an order of affirmance and an order of reversal. It was observed : (SCR p. 208 : SCC p. 480, para 19)

> "....while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its order if it differs from the conclusions arrived at and the recommendations made by the enquiring officer in view of the scheme of a particular enactment or the rules made thereunder, it would be laying down the proposition too broadly to say that even an ordinary concurrence must be supported by reasons."

34. In *Raipur Development Authority* v. *Chokhamal Contractors*[23] a Constitution Bench of this Court was considering the question whether it is obligatory for an arbitrator under the Arbitration Act, 1940 to give reasons for the award. It was argued that the requirement of giving reasons for the decision is a part of the rules of natural justice which are also applicable to the award of an arbitrator and reliance was placed on the decisions in *Bhagat Raja case*[2] and *Siemens Engineering Co. case*[5]. The said contention was rejected by this Court. After referring to the decisions in *Bhagat Raja case*[2], *Som Datt Datta case*[1] and *Siemens*

Engineering Co. case[5] this Court has observed : (SCC pp. 751-52, para 35)

> "It is no doubt true that in the decisions pertaining to administrative law, this Court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rules. It would be in the interest of the

world of commerce that the said rule is confined to the area of administrative law... But at the same time it has to be borne in mind that what applies generally to settlement of disputes by authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes."

35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (*i*) guarantee consideration by the authority; (*ii*) introduce clarity in the decisions; and (*iii*) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no

less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of

the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

37. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The Committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity". (p. 80) Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice". (See Wade, *Administrative Law,* 6th edn. p. 548.) In *Siemens Engineering Co. case*[5] this Court has taken the same view when it observed that

"the rule requiring reasons to be given in support of an order is, like the principles of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process". This decision proceeds on the basis that the two well known principles of natural justice, namely (*i*) that no man should be a judge in his own cause, and (*ii*) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in *A.K. Kraipak* v. *Union of India*[24] wherein it has been held : (SCR pp. 468-69 : SCC p. 272, para 20)

> "The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely : (*i*) no one shall be a judge in his own cause (*nemo debet esse judex propria causa*), and (*ii*) no decision shall be given against a party without affording him a reasonable hearing

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(*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that *quasi*-judicial enquiries must he held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."

38. A similar trend is discernible in the decisions of English courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See : *R.* v. *Deputy Industrial Injuries Commissioner ex p. Moore*[25]; *Mahon* v. *Air New Zealand Ltd.*[26])

39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular

statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underly-ing such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

41. We may now come to the second part of the question, namely, whether the confirming authority is required to record its reasons for confirming the finding and sentence of the court martial and the Central Government or the competent authority entitled to deal with the post-confirmation petition is required to record its reasons for the order passed by it on such petition. For that purpose it will be necessary to determine whether the Act or the Army Rules, 1954 (hereinafter referred to as 'the Rules') expressly or by necessary implication dispense with the requirement of recording reasons. We propose to consider this aspect in a broader perspective to include the findings and sentence of the court martial and examine whether reasons are required to be recorded at the stage of (*i*) recording of findings and sentence by the court martial; (*ii*) confirmation of the findings and sentence of the court martial; and (*iii*) consideration of post-confirmation petition.

42. Before referring to the relevant provisions of the Act and the Rules it may be mentioned that the Constitution contains certain special provisions in regard to members of the Armed Forces. Article 33 empowers Parliament to make law determining the extent to which any of the rights conferred by Part III shall, in their application to the members of the Armed Forces be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline amongst them. By clause (2) of Article 136 the appellate jurisdiction of this Court under Article 136 of the Constitution has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces. Similarly clause (4) of Article 227 denies to the High Courts the power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces. This Court under Article 32 and the High Courts under Article 226 have, however, the power of judicial review in respect of proceedings of courts martial and the proceedings subsequent thereto and can grant appropriate relief if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record.

43. Reference may now be made to the provisions of the Act and the Rules which have a bearing on the requirement to record reasons for the findings and sentence of the court martial. Section 108 of the Act makes provision for four kinds of courts martial, namely, (*a*) general courts martial; (*b*) district courts martial; (*c*) summary general courts martial and (*d*) summary courts martial. The procedure of court martial is prescribed in Chapter XI (Sections 128 to 152) of the Act. Section 129 prescribes that every general court martial shall, and every district or

summary general court martial may, be attended by a judge-advocate, who shall be either an officer belonging to the department of the Judge -Advocate General, or if no such officer is available, an officer approved of by the Judge-Advocate General or any of his deputies. In sub-section (1) of Section 131 it is provided that subject to the provisions of sub-sections (2) and (3) every decision of a court martial shall be passed by an absolute majority of votes, and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused. In sub-section (2) it is laid down that no sentence of death shall be passed by a general court martial without the

concurrence of at least two-thirds of the members of the court and sub-section (3) provides that no sentence of death shall be passed by a summary general court martial without the concurrence of all the members. With regard to the procedure at trial before the general and district courts martial further provisions are made in Rules 37 to 105 of the Rules. In Rule 60 it is provided that the judge-advocate (if any) shall sum up in open court the evidence and advise the court upon the law relating to the case and that after the summing up of the judge-advocate no other address shall be allowed. Rule 61 prescribes that the court shall deliberate on its findings in closed court in the presence of the judge-advocate and the opinion of each member of the court as to the finding shall be given by word of mouth on each charge separately. Rule 62 prescribes the form, record and announcement of finding and in sub-rule (1) it is provided that the finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded simply as a finding of "Guilty" or of "Not guilty". Sub-rule (10) of Rule 62 lays down that the finding on charge shall be announced forthwith in open court as subject to confirmation. Rule 64 lays down that in cases where the finding on any charge is guilty, the court, before deliberating on its sentence, shall, whenever possible take evidence in the matters specified in sub-rule (1) and thereafter the accused has a right to address the court thereon and in mitigation of punishment. Rule 65 makes provision for sentence and provides that the court shall award a single sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge and in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given. Rule 66 makes provisions for recommendation to mercy and sub-rule (1) prescribes that if the court makes a recommendation to mercy, it shall give its reasons for its recommendation. Sub-rule (1) of Rule 67 lays down that the sentence together with any recommendation to mercy and the reasons for any such recommendation will be announced forthwith in open court. The powers and duties of

judge-advocate are prescribed in Rule 105 which, among other things, lays down that at the conclusion of the case he shall sum up the evidence and give his opinion upon the legal bearing of the case before the court proceeds to deliberate upon its finding and the court, in following the opinion of the judge-advocate on a legal point may record

that it has decided in consequence of that opinion. The said rule also prescribes that the judge-advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth. It is further laid down that in fulfilling his duties, the judge-advocate must be careful to maintain an entirely impartial position.

44. From the provisions referred to above it is evident that the judge -advocate plays an important role during the course of trial at a general court martial and he is enjoined to maintain an impartial position. The court martial records its findings after the judge-advocate has summed up the evidence and has given his opinion upon the legal bearing of the case. The members of the court have to express their opinion as to the finding by word of mouth on each charge separately and the finding on each charge is to be recorded simply as a finding of "guilty" or of "not guilty". It is also required that the sentence should be announced forthwith in open court. Moreover Rule 66(1) requires reasons to be recorded for its recommendation in cases where the court makes a recommendation to mercy. There is no such requirement in other provisions relating to recording of findings and sentence. Rule 66(1) proceeds on the basis that there is no such requirement because if such a requirement was there it would not have been necessary to make a specific provision for recording of reasons for the recommendation to mercy. The said provisions thus negative a requirement to give reasons for its finding and sentence by the court martial and reasons are required to be recorded only in cases where the court martial makes a recommendation to mercy. In our opinion, therefore, at the stage of recording of findings and sentence the court martial is not required to record its reasons and at that stage reasons are only required for the recommendation to mercy if the court martial makes such a recommendation.

45. As regards confirmation of the findings and sentence of the court martial it may be mentioned that Section 153 of the Act lays down that no finding or sentence of a general, district or summary general, court martial shall be valid except so far as it may be confirmed as provided by the Act. Section 158 lays down that the confirming authority may while confirming the sentence of a court martial mitigate or remit

the punishment thereby awarded, or commute that punishment to any punishment lower in the scale laid down in Section 71. Section 160 empowers the confirming authority to revise the finding or sentence of the court martial and in sub-section (1) of Section 160 it is provided that on such revision, the court, if so directed by the confirming authority, may take additional evidence. The confirmation of the finding and sentence is not required in respect of summary court martial and in Section 162 it is provided that the proceedings of every summary court martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held or to the prescribed officer; and such officer or the Chief of the Army Staff or any officer empowered in this behalf may, for reasons based on the

merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed. In Rule 69 it is provided that the proceedings of a general court martial shall be submitted by the judge-advocate at the trial for review to the deputy or assistant judge-advocate general of the command who shall then forward it to the confirming officer and in case of district court martial it is provided that the proceedings should be sent by the presiding officer, who must, in all cases, where the sentence is dismissal or above, seek advice of the deputy or assistant judge-advocate general of the command before confirmation. Rule 70 lays down that upon receiving the proceedings of a general or district court martial, the confirming authority may confirm or refuse confirmation or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings. Rule 71 lays down that the charge, finding and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct, and if no direction is given, according to custom of the service and until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated.

46. The provisions mentioned above show that confirmation of the findings and sentence of the court martial is necessary before the said finding or sentence become operative. In other words the confirmation of the findings and sentence is an integral part of the proceedings of a court martial and before the findings and sentence of a court martial

are confirmed the same are examined by the deputy or assistant judge-advocate general of the command which is intended as a check on the legality and propriety of the proceedings as well as the findings and sentence of the court martial. Moreover we find that in Section 162 an express provision has been made for recording of reasons based on merits of the case in relation to the proceedings of the summary court martial in cases where the said proceedings are set aside or the sentence is reduced and no other requirement for recording of reasons is laid down either in the Act or in the Rules in respect of proceedings for confirmation. The only inference that can be drawn from Section 162 is that reasons have to be recorded only in cases where the proceedings of a summary court martial are set aside or the sentence is reduced and not when the findings and sentence are confirmed. Section 162 thus negatives a requirement to give reasons on the part of the confirming authority while confirming the findings and sentence of a court martial and it must be held that the confirming authority is not required to record reasons while confirming the findings and sentence of the court martial.

47. With regard to post-confirmation proceedings we find that sub-section (2) of Section 164 of the Act provides that any person subject to the Act who considers himself aggrieved by a finding or sentence of any court martial which has been confirmed, may present a petition to the Central Government, the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence and the Central Government, the Chief of the Army Staff or other officer, as the case may be, may pass such orders thereon as it or he thinks fit. Insofar as the findings and sentence of a court martial and the proceedings for confirmation of such findings and sentence are concerned it has been found that the scheme of the Act and the Rules is such that reasons are not required to be recorded for the same. Has the legislature made a departure from the said scheme in respect of post-confirmation proceedings? There is nothing in the language of sub -section (2) of Section 164 which may lend support to such an intention. Nor is there anything in the nature of post-confirmation proceedings which may require recording of reasons for an order passed on the post-confirmation petition even though reasons are not required to be recorded at the stage of recording of findings and sentence by a court martial and at the stage of confirmation of the findings and sentence of the court martial by the confirming authority. With regard to recording of reasons the considerations which apply at the stage of recording of findings and sentence by the court martial and at the stage of confirmation of findings and sentence of the court martial by the confirming authority are equally applicable at the stage of consideration of the post-confirmation petition. Since reasons are not required to be

recorded at the first two stages referred to above, the said requirement cannot, in our opinion, be insisted upon at the stage of consideration of post-confirmation petition under Section 164(2) of the Act.

48. For the reasons aforesaid it must be held that reasons are not required to be recorded for an order passed by the confirming authority confirming the findings and sentence recorded by the court martial as well as for the order passed by the Central Government dismissing the post-confirmation petition. Since we have arrived at the same conclusion as in *Som Datt Datta case*[1] the submission of Shri Ganguli that the said decision needs reconsideration cannot be accepted and is, therefore, rejected.

49. But that is not the end of the matter because even though there is no requirement to record reasons by the confirming authority while passing the order confirming the findings and sentence of the court martial or by the Central Government while passing its order on the post-confirmation petition, it is open to the person aggrieved by such an order to challenge the validity of the same before this Court under Article 32 of the Constitution or before the High Court under Article 226 of the Constitution and he can obtain appropriate relief in those proceedings.

50. We will, therefore, examine the other contentions that have been urged by Shri Ganguli in support of the appeal.

51. The first contention that has been urged by Shri Ganguli in this regard is that under sub-section (1) of Section 164 of the Act the appellant had a right to make a representation to the confirming authority before the confirmation of the findings and sentence recorded by the court martial and that the said right was denied inasmuch as the appellant was not supplied with the copies of the relevant record of the court martial to enable to him to make a complete representation and further that the representation submitted by the appellant under sub-section (1) of Section 164 was not considered by the confirming authority before it passed the order dated May 11, 1979 confirming the findings and sentence of the court martial. The learned Additional Solicitor General, on the other hand, has urged that under sub-section (1) of Section 164 no right has been conferred on a person aggrieved by the findings or sentence of a court martial to make a representation to the confirming authority before the confirmation of the said findings or sentence. The submission of learned Additional Solicitor General is

that while sub-section (1) of Section 164 refers to an order passed by a court martial, sub-section (2) of Section 164 deals with the findings or sentence of a court martial and that the only right that has been conferred on a person aggrieved by the finding or sentence of a court martial is that under sub-section (2) of Section 164 and the said right is available after the finding and sentence has been confirmed by the confirming authority. We find considerable force in the aforesaid submission of learned Additional Solicitor General.

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52. Section 164 of the Act provides as under:

"164. (1) Any person subject to this Act who considers himself aggrieved by any order passed by any court martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court martial and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court martial which has been confirmed, may present a petition to the Central Government, the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence and the Central Government, the Chief of the Army Staff or other officer, as the case may be, may pass such orders thereon as it or he thinks fit."

53. In sub-section (1) reference is made to orders passed by a court-martial and enables a person aggrieved by an order to present a petition against the same. The said petition has to be presented to the officer or the authority empowered to confirm any finding or sentence of such court martial and the said authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order or as to the regularity of any proceedings to which the order relates. Sub-section (2), on the other hand, makes specific reference to finding or sentence of a court martial and confers a right on any person feeling aggrieved by a finding or sentence of any court martial which has been confirmed, to present a petition to the Central Government, Chief of the Army Staff or any prescribed officer. The use of the expression "order" in sub-section (1) and the expression "finding or sentence" in sub-section (2) indicates that the scope of sub-

section (1) and sub-section (2) is not the same and the expression "order" in sub-section (1) cannot be construed to include a "finding or sentence". In other words insofar as the finding and sentence of the court martial is concerned the only remedy that is available to a person aggrieved by the same is under sub-section (2) and the said remedy can be invoked only after the finding or sentence has been confirmed by the confirming authority and not before the confirmation of the same. Rule 147 of the Rules also lends support to this view. In the said rule it is laid down that every person tried by a court martial shall be entitled on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceeding a copy thereof, including the proceedings upon revision, if any. This rule

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envisages that the copies of proceedings of a court martial are to be supplied only after confirmation of the finding and sentence and that there is no right to obtain the copies of the proceedings till the finding and sentence have been confirmed. This means that the appellant cannot make a grievance about non-supply of the copies of the proceedings of the court martial and consequent denial of his right to make a representation to the confirming authority against the findings and sentence of the court martial before the confirmation of the said finding and sentence. Though a person aggrieved by the finding or sentence of a court martial has no right to make a representation before the confirmation of the same by the confirming authority, but in case such a representation is made by a person aggrieved by the finding or sentence of a court martial it is expected that the confirming authority shall give due consideration to the same while confirming the finding and sentence of the court martial.

54. In the present case the representation dated December 18, 1978 submitted by the appellant to the confirming authority was not considered by the confirming authority when it passed the order of confirmation dated May 11, 1979. According to the counter-affidavit filed on behalf of Union of India this was due to the reason that the said representation had not been received by the confirming authority till the passing of the order of confirmation. It appears that due to some communication gap within the department the representation submitted by the appellant did not reach the confirming authority till the passing of the order of confirmation. Since we have held that the

appellant had no legal right to make a representation at that stage the non-consideration of the same by the confirming authority before the passing of the order of confirmation would not vitiate the said order.

55. Shri Ganguli next contended that the first and the second charge levelled against the appellant are identical in nature and since the appellant was acquitted of the second charge by the court martial his conviction for the first charge cannot be sustained. It is no doubt true that the allegations contained in the first and the second charge are practically the same. But as mentioned earlier, the second charge was by way of alternative to the first charge. The appellant could be held guilty of either of these charges and he could not be held guilty of both the charges at the same time. Since the appellant had been found guilty of the first charge he was acquitted of the second charge. There is, therefore, no infirmity in the court martial having found the appellant guilty of the first charge while holding him not guilty of the second charge.

56. Shri Ganguli has also urged that the findings recorded by the court martial on the first and third charges are perverse inasmuch as

there is no evidence to establish these charges. We find no substance in this contention.

57. The first charge was that the appellant on or about December 25, 1975, having received 60.61 meters woollen serge from M/s Ram Chandra & Brothers, Sadar Bazar, Jhansi for stitching 19 coats and 19 pants for Class IV civilian employees of his unit with intent to defraud got 19 altered ordnance pattern woollen pants issued to the said civilian employees instead of pants stitched out of the cloth received. To prove this charge the prosecution examined Ram Chander PW 1 and Triloki Nath PW 2 of M/s Ram Chandra & Brothers, Sadar Bazar, Jhansi who have deposed that 60.61 meters of woollen serge cloth was delivered by them to the appellant in his office in December 1975. The evidence of these witnesses is corroborated by B.D. Joshi, Chowkidar, PW 3, who has deposed that in the last week of December 1975, the appellant had told him in his office that cloth for their liveries had been received and they should give their measurements. As regards the alteration of 19 ordnance pattern woollen pants which were issued to the civilian employees instead of the pants stitched out of the cloth that was received, there is the evidence of N/Sub. P. Vishwambharam PW 19 who has deposed that he was called by the appellant to his office in the last week of December 1975 or the first week of January 1976 and

that on reaching there he found ordnance pattern woollen pants lying by the side of the room wall next to the appellant's table and that the appellant had called Mohd. Sharif PW 15 to his office and had asked him to take out 19 woollen trousers out of the lot kept there in the office. After Mohd. Sharif had selected 19 woollen trousers the appellant told Mohd. Sharif to take away these pants for alteration and refitting. The judge-advocate, in his summing up, before the court martial, has referred to this evidence on the first charge and the court martial, in holding the appellant guilty of the first charge, has acted upon it. It cannot, therefore, be said that there is no evidence to establish the first charge levelled against the appellant and the findings recorded by the court martial in respect of the said charge is based on no evidence or is perverse.

58. The third charge, is that the appellant having come to know that Capt. Gian Chand Chhabra while officiating OC of his unit, improperly submitted wrong Contingent Bill No. 341/Q dated September 25, 1975 for Rs 16,280 omitted to initiate action against Capt. Chhabra.

59. In his summing up before the court martial the judge-advocate referred to the CDA letter M/IV/191 dated November 20, 1975 (Ex. 'CC') raising certain objections with regard to Contingent Bill No. 341/Q dated September 25, 1975 for Rs 16,280 and pointed out that the said letter was received in the unit on or about November 28, 1975 and bears

the initials of the appellant with the aforesaid date and remark "Q Spk with details". This would show that the appellant had knowledge of the Contingent Bill on November 28, 1975. It is not the case of the appellant that he made any complaint against Captain Chhabra thereafter. It cannot, therefore, be said that the finding recorded by the court martial on the third charge is based on no evidence and is perverse.

60. In the result we find no merit in this appeal and the same is accordingly dismissed. But in the circumstances there will be no order as to costs.

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† From the Judgment and Order dated the August 12, 1981 of the Delhi High Court in C.W.P. No. 1835 of 1981

[1] (1969) 2 SCR 177 : AIR 1969 SC 414 : 1969 Cri LJ 663

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[2] (1967) 3 SCR 302 : AIR 1967 SC 1606

[3] (1970) 1 SCC 764 : (1971) 1 SCR 201

[4] (1974) 3 SCC 318 : 1974 SCC (L&S) 551 : (1974) 1 SCR 504

[5] (1976) 2 SCC 981 : 1976 Supp SCR 489

[6] (1940) 85 L ed 1271, 1284

[7] (1942) 87 L ed 626, 636

[8] (1975) 44 L ed 2d 377

[9] (1970) 2 QB 417, 413 : (1970) 2 All ER 528

[10] (1978) 1 WLR 1520, 1531 : (1978) 3 All ER 211

[11] (1971) 2 QB 175, 191: (1971) 1 All ER 1148

[12] 1974 ICR 120

[13] 1983 QB 790 : (1983) 2 All ER 420

[14] (1947) 1 DLR 501, 539

[15] (1983) 139 DLR (3d) 168

[16] (1983) 139 DLR (3d) 544

[17] (1985) 3 NSW LR 447

[18] (1986) 63 ALR 559

[19] (1962) 2 SCR 339 : AIR 1961 SC 1669 : (1961) 31 Comp Cas 387

[20] (1966) 1 SCR 466 : AIR 1966 SC 671

[21] (1969) 3 SCC 868 : (1970) 3 SCR 40

[22] (1977) 1 SCC 472 : 1977 SCC (L&S) 151 : (1972) 2 SCR 198

[23] (1989) 2 SCC 721

[24] (1969) 2 SCC 262 : (1970) 1 SCR 457

[25] (1965) 1 QB 456 : (1965) 1 All ER 81

[26] 1984 AC 648 : (1984) 3 All ER 201