BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

APPEAL NO. 20 OF 2013

In the matter of :

Mr. Rudresh Naik .....Appellant

Versus

Goa Coastal Zone Management Authority .....Respondent

Counsel for Appellant :

Mr. Yogesh S. Naik & Mr. V.R. Tamba, Advocates.

Counsel for Respondent :

Mr. V. Madhukar and Mr. Paritosh, Advocates, for Respondent

JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U. D. Salvi (Judicial Member)

Hon'ble Dr.D.K. Agrawal (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : May 16, 2013

JUSTICE SWATANTER KUMAR, (CHAIRPERSON):

The appellant is the proprietor of the sole proprietorship concern, titled Sudarshan Dry Docks, as well as a partner of the firm, M/s Swastik Cruises. The partnership firm is carrying on the

business of tourism, like conducting boat cruises in the rivers of Goa. The firm has engaged three vessels to carry tourists as its normal business activity. In order to facilitate this functioning, the firm had purchased a piece of land measuring about 13,525 sq.m. to carry on its business activity. The land so purchased is adjacent to the river and this can be utilised for inspection, maintenance and repairs of the vessels as well. To facilitate this activity and to carry out other developmental activities, the appellant had to construct a slipway. For this purpose, the appellant had applied in July, 2009 to the Goa Coastal Zone Management Authority (hereinafter referred to as "GCZMA") seeking necessary permission to carry out such activities. Since for a considerable time, no response had been received from the said authority, the appellant filed a Writ Petition before the High Court of Bombay, being W.P.(C) No. 165 of 2010. During the pendency of the said Writ Petition, a show cause notice in July, 2010 was issued by the GCZMA to the appellant. This resulted in the disposal of the Writ Petition, granting liberty to the petitioner to proceed in accordance with the law. Subsequently, GCZMA passed an order restraining the appellant from going ahead with the work in regard to the construction of the slipway. This resulted in filing of another Writ Petition by the appellant in the same Court. The High Court allowed the Writ Petition and set aside the order passed by the GCZMA primarily on the ground that adequate opportunity was not granted to the appellant before passing the order. The said authority, after providing an opportunity to the appellant again passed an order dated, 11th April, 2012, directing the appellant to make good of the geological

and ecological loss at the site by back filling the cut portion in the disputed properties, restore the area back to its original status and carry out the plantation in the said area. The order dated 11th April, 2012 was a detailed order and the operative part thereof reads as under:

> "It was decided to issue directions for restoring the site back to its original status by appropriate back filling and carrying out plantation in the area; in addition to the directions decided upon during the GCZMA meeting held on 02/04/2012.
>
> 44. Now, therefore, in exercise of the powers conferred by section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986), delegated to the GCZMA; the GCZMA hereby directs Shri Rudresh Naik to make good the geological and ecological loss at site, by back filling the cut portion and the cavity formed in the property bearing survey No. 41/2 of Vagurbem Village, Ponda taluka and restore the area back to its original status, by appropriate back filling and carrying out plantation in the area, within thirty (30) days from the date of receipt of this order failing which the GCZMA will issue directions to the appropriate Authority to carry out the directions and the cost towards the same shall be recovered from the violator."

2. The order dated 11th April, 2012 was impugned by the appellant before the National Green Tribunal in Appeal No. 23/2011. The main challenge to the order impugned was on the ground that the order suffers from non-consideration of vital material and is based on errors of facts which are apparent on the face of record. The Tribunal vide its order dated 27th August, 2012 accepted the appeal and passed certain directions. It will be appropriate to refer to the relevant part of this order, which reads as under:

> "12. Be that as it may, this Tribunal is conscious with regard to any danger caused to the environment by felling of trees and digging portions of sandy hill, thereby affecting the coastal eco-system. Felling indiscriminately trees and bushes also have great impact on the ecology.

Though, the Appellant repudiates existing of any hill on the site, averments made in the paragraph 15 of the Memorandum of Appeal gives an impression that hills (sand) are existing on the spot.

13. After going through the records meticulously and hearing the counsel for the Appellant in the absence of any counter submissions, we feel that the order dated 11th April, 2012 passed by the Respondent No.2 (GCZMA) which is impugned in this appeal, cannot be sustained, more so because the respondents have failed to appear and controvert the allegations made in the memorandum of Appeal.

14. It appears that the dispute has a chequered career, inasmuch as it has travelled to the Hon'ble High Court twice and is prolonging for quite some time. Protection of environment being the paramount concern/duty of this Tribunal while setting aside the impugned order dated 11th April, 2012, we direct the petitioner to deposit a sum of Rs.1 lakh without prejudice to his rights, and the contentions raised and submissions advanced within a period of three weeks from the date of this order before Respondent No.2. The said amount shall be kept in Fixed Deposits by Respondent No.2 in a Nationalised Bank. On depositing the said amount, Respondent No.2 authorities shall afford an opportunity of hearing to the Appellant and decide the matter once again in accordance with law on its own merits without being influenced by any of the observations made in this judgment. It is needless be said that if the contentions of the Appellant are accepted, the amount of one lakh shall be refunded with interest. On the other hand, if the Appellant is found guilty, the amount shall be utilised for restoration of the Environment.

15. The entire exercise shall be completed within three weeks from depositing of the amount, as directed above. It is made clear that, if the amount of Rs.1 lakh is not deposited within one month, it would be open for the respondents to implement the impugned order. With the aforesaid observations, this appeal is allowed with cost of Rs.3,000/- (Rupees Three Thousand)."

3. As is apparent from the above directions, the authority had failed to appear before the Tribunal and despite furnishing a copy of the said order, it did not comply with the same completely although the appellant claimed that he had deposited a sum of Rs. 1 lakh with the Respondent, as directed in the said order. After waiting for a reasonable time, the appellant again filed the Miscellaneous

Application, being M.A. No.172/2012 praying in that Application that appropriate action be initiated against the Respondent-Authority in terms of Section 26 read with Section 28 of the National Green Tribunal Act, 2010 for non-compliance of the judgment dated 27th August, 2012. Upon notice, the Respondent appeared and filed their reply raising various contentions.

4. The Bench of this Tribunal vide its order dated 18th December, 2012, after noticing that the Member-Secretary of the Respondent did not comply with the order of the Tribunal, observed that the authority did not act in a prudent manner and rather exhibited their inaction to the rule of law. However, the learned counsel appearing for the parties agreed for disposal of the said application through a consented order. The consented order, vide which the application was disposed of is recorded as under:

> "Learned Counsel appearing for both the parties agreed to said proposition. Therefore, on the basis of the agreement and consent arrived at, we direct as follows:-
> The Appellant shall deposit a further sum of Rs.50,000/- with the authorities within a period of Three(3) weeks hence. The authorities shall close all the proceedings which have been initiated against the Applicant in respect of the disputed lands pending as on date. The directions issued by the Member Secretary in his order dated 11th April, 2012 would be deemed to have been fully complied with. The authorities shall utilize the aforesaid sum of Rs.50,000/- to be deposited and Rs.1 lakh which has already been deposited by the Applicant towards restoring the geological and ecological loss caused to the area and also for afforestation purpose.
> 9. Learned Counsel for the Applicant submits that the Applicant had filed an application seeking to accord permission to carry out certain developments to his property. If such a petition is pending, the Member Secretary or the Authority, as the case may be, shall dispose it of on its merits, in accordance with law within a period of Six(6) weeks from the date of communication of this order, without being in any way prejudiced by any of the observations made in the order dated 11th April, 2012.

With the aforesaid observations and directions, this miscellaneous application stands disposed of. Parties to bear their own cost."

5. The Applicant deposited the additional sum of Rs.50,000/- as well in terms of the order of the Tribunal dated 18th December, 2012. Subsequently, the GCZMA, through its Member Secretary, passed the final order dated 29th January, 2013 while noticing that construction of marine slipway for dry dock was otherwise a permissible activity, but since the area was of hilly terrain and was likely to disturb the ecology, rejected the proposal of the applicant. It will be useful to refer to the entire order dated 29th January, 2013 at this stage, which reads as follows:

"With reference to your letter No. NIL dated 10/07/2009 regarding the proposed construction of marine slipway for Dry-dock of barge, boats, tugs, in Sy. No. 41/2 of Vagurbem village, Ponda taluka by M/s. Sudarshan Dry Docks the proposal was placed before the Authority in its 78th Meeting of GCZMA held on 24/01/2013;

The GCZMA Members after perusing the documents, and the directions of the Hon'ble National Green Tribunal in Misc Application No. 172/2012 in Appeal No.23/2011 dated 18/12/2012; noted that the application of the Project proponent should be disposed of on its merits. Further, after going through the records the members observed that grave ecological and geological damage has been caused by the project proponent which on one hand is required to be remediated;

The Members felt that although the present proposal is for construction of marine slipway for dry dock which is otherwise permissible activity; however, while going through the proposal the Authority felt that allowing it would cause irreparable damage to the already fragile hilly terrain; in fact the Applicant has already caused extensive damage by undertaking unauthorised hill cutting thereby causing destruction to environment, granting permission would be detrimental to the ecology. Hence, the Authority has rejected this proposal;

You are hereby informed that the proposal for proposed construction of marine slipway for Dry-dock of barge, boats, tugs, in Sy. No. 41/2 of Vagurbem village, Ponda taluka by M/s. Sudarshan Dry Docks is rejected."

6. Aggrieved from the above order, the appellant has filed the present appeal challenging the legality and correctness of the order dated 29th January, 2013.

Contentions:

7. *Inter alia* but primarily, the challenge to the impugned order dated 29th January, 2013 is on the following grounds:-

(a) The order does not record any reasons for rejecting the proposal of the appellant.

(b) There is no hilly terrain/region involved in the present case. The finding that it was a hilly terrain is based on 'no evidence' and is founded on conjectures and surmises of the authority itself.

(c) The documentary evidence placed by the appellant before the authority has been wrongly ignored and irrelevant material has been considered by the authority, rendering the order arbitrary.

(d) Even the earlier show cause notices dated 5th August, 2011 and 27th May, 2011 have been set aside by the court or withdrawn by the authority itself, and thus similar grounds should not be relied upon for passing the impugned order.

(e) The area upon which the appellant is constructing the marine slipway for dry dock falls in the port area upon which 'No Development Zone' is not applicable and thus GCZMA has no jurisdiction in relation to the developments carried out in the area. It is a permissible activity and the Captain of Ports,

from whom the appellant has already obtained permission, alone can deal with the matter.

Discussion on Law and Merits of the case:

8. In the facts of the present case, it may not be necessary for us to examine the merits or otherwise of all the contentions raised before us by the appellant. First and foremost, we would prefer to deal with the two contentions relating to non-recording of appropriate reasons, non-application of mind and that the findings returned in relation to it being a hilly terrain (region) is unsustainable.

9. The contention before us is that on one hand, there was no material before the authority to return the findings in relation to hilly terrain while, on the other hand, the Authority completely ignored the documents and material evidence produced by the appellant. The appellant has placed on record Regional Plan of Goa, which was declared on 4th March, 2011 by the Town and Country Planning Department of the State of Goa. This plan relates to Savoi-veram Panchayat Ponda Taluka and shows different lands and their uses. It also specifically shows the ecologically sensitive area. In the legend of this map, 'no development slope' as well as 'orchards' have been shown, amongst other areas. In this map, Survey No. 41/2 of Vagurbem village, the area in question has been shown and marked as orchards. It is further stated that orchard area is distinct from 'no development slopes'. From this it appears that development activity could be carried out in the orchard area subject to the limitations and in accordance with law. However, no development

could be carried out in the 'no development slopes' which would obviously mean hilly slopes on which development activity is impermissible. A detailed final report attached to this map further shows under paragraph 3.5 that all slopes with gradient 25% and above are generated by using contours from Topo maps of Survey of India with a 10 m contour interval. With this gradient as a starting point, No Development Slopes have been marked very carefully to include entire hill sides and ranges that need to be conserved. Occasionally, these areas overlap with settlements due to errors of adjustment at taluka level map. In such cases, development, it is stated, should be allowed in developable zones only after detailed slope analysis is carried out. This means that the slopes with gradient of 25%, no development can be permitted. Similarly, while dealing with areas of orchards under paragraph 3.11 of the report, it is recorded as under:

> "Lands with a gentle slope/plateau areas, pasture land, waste lands, horticultural crop areas, land with shrubs, barren lands, etc. have been shown as "Orchard". Some of these areas which have sufficient greenery (based on Google imagery) have been carved out of existing Orchard Zone and are currently included as "Natural Cover". The developments permissible within these lands are as per A-1 and A-2 categories."

10. This would mean that in these areas which have sufficient greenery, the development is permissible, of course, subject to the limitations stated therein.

11. The above documents have been referred to in the pleadings of the appellant and have also been relied upon heavily during the course of the arguments. It is also averred that these documents were placed before the GCZMA, but have not been

considered. In the reply filed on behalf of GCZMA, neither have these documents been controverted nor any specific averment has been made that the area in question is a hilly terrain where no development is permissible.

12. In the impugned order, it has been noticed that the construction of marine slipway for dry dock is a permissible activity but still the proposal of the appellant has been rejected on the ground that execution of the proposal is likely to cause extensive damage by undertaking unauthorised hill cutting and would thereby cause irreparable damage to the hilly terrain. Thus, the sole ground on the basis of which the proposal of the appellant has been rejected is founded on the factum of the area being a hilly terrain. If the area in question is not a hilly terrain, then the question of cutting the hill area and destroying or damaging the fragile hill area would not arise. The order provides no reasoning whatsoever to show as to on what basis such a vital fact has been recorded. It does not refer to any document or map or any other evidence that would show that such an assumption of facts was justifiable in the facts of the present case. It is also undisputed before us that despite there being a specific stand taken by the appellant, none of the members of the committee paid a visit to the site in question. As already noticed, the order refers to no document, no inspection being conducted by the competent authority and, therefore, it is not understandable as to how the documents filed by the appellant, which were the documents of the Government of Goa itself, stood rebutted. A fact must be pleaded and proved. If averred in the pleadings, it must be supported by producing the documents as

evidence. Besides the above, it is also averred that even other documents showing that the area was not a hilly terrain were filed including the permission from the Captain of Ports. The discussion upon all these issues is conspicuous by its very absence in the impugned order. It is a settled rule of law that administrative authorities which are dealing with the rights of the parties and are passing orders which will have civil consequences, must record appropriate reasons in support of their decisions. Certainly, these reasons must not be like judgments of courts, but they must provide an insight into the thinking process of the authority as to for what reasons it accepted or rejected the request of the applicant. The authority concerned should provide a fair and transparent procedure and the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. While referring to this principle in the case of *Assistant Commissioner, Commercial Tax Department, works contract and leasing, Kota vs. Shukla & Bros* (2010) 4 SCC 785, the Supreme Court of India stressed upon the need for recording reasons and for the authority to act fairly. The court held as under:

> "11. The Supreme Court in *S.N. Mukherjee* v. *Union of India* while referring to the practice adopted and insistence placed by the courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". To enable the courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review. This Court with approval stated:
>
> > "*11.* … 'the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained'."

12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastisement. Thus, it will not be far from an absolute principle of law that the courts should record reasons for their conclusions to enable the appellate or higher courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub serve the purpose of justice delivery system, therefore, it is essential that the courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing.

13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view."

13. Another Constitution Bench of the Supreme Court, in the case of *S.N. Mukherjee vs. Union of India* (1990) 4 SCC 594, while referring to the English law as well as the judgments of the Supreme Court, stated that the failure to give reasons amounts to denial of justice. A party appearing before the Tribunal is entitled to know, either expressly or inferentially, the reasons stated by the

Tribunal, and what it is to which the Tribunal is addressing its mind. The decision should be in the form of a reasoned document available to the parties affected and thus, the party should be informed of the reasons. The Apex Court in the case of *Ravi Yashwant Bhoir v. Collector* (2012) 4 SCC 407, reiterated that it is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon authorities to pass a speaking and reasoned order. The Court noticed that the expanding horizon of the principles of natural justice provides for the requirement to record reasons unless recording of such reasons is specifically excluded by a Statute.

14. Such a view has been expressed by the Supreme Court consistently in the past. In the case of *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi* (1991) 2 SCC 716, the Supreme Court had emphasized upon the fact that it is implicit that principles of natural justice or fair play do require recording of reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. Even if it is not the requirement of rules, but at least, the record should disclose reasons. It also held that recording of reasons excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. The Court also noticed that omission to record reasons may vitiate the order. The Court while noticing that omnipresence and omniscience of the principles of natural justice act as deterrence to arrive at arbitrary decisions in flagrant infraction of fair play, held as under:

"21. Thus it is settled law that the reasons are harbinger between the minds of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.

xxxxx xxxxx xxxxx

27. The consistent view of the courts has been that recording of reasons is an essential feature of the principles of natural justice. Natural justice cannot be understood in isolation. It must be examined while keeping in mind the facts and circumstances of a given case. As already noticed, violation of principles of natural justice and its consequences in law would always be relatable to a situation in a given case. Providing of notice, giving a fair opportunity to put forward its case and to record reasons are the essential features of the doctrine of natural justice. It is neither permissible nor prudent to permit violation of these rules and prejudice, though is a relevant consideration, may not always be an indispensable aspect. The cases in which, *ex facie,* a serious violation of principles of natural justice is shown, the Court or the Tribunal may declare the action invalid and ineffective, even in absence of proven prejudice."

15. The non-recording of reasons in the impugned order dated 29th January, 2013 has resulted in rendering the entire decision making process unfair and arbitrary. The only paragraph stated in the impugned order, as noticed, is self-contradictory. If development is permissible as a matter of law then in exercise of which power was the development denied, particularly in the absence of any direct evidence to show that the area in question was a hilly terrain. The other contentions raised by the appellant,

including the effect of grant of permission by the Captain of Ports as well as the earlier show cause notice having been quashed or withdrawn by the GCZMA, have not been dealt with in the impugned order. For these reasons, the order is open to judicial chastisism and cannot be sustained in law.

16. Another ground which we are called upon to consider in the present case is that the finding of the GCZMA, in relation to hilly terrain is based on no evidence. Such a finding is based on conjectures and surmises on the one hand and on the other, completely ignores from the zone of its consideration a very important document which had been placed by the appellant for its consideration which has been referred to above. If this contention is adjudged to be correct, then it will introduce the element of unfairness and arbitrariness in the entire decision making process which may ultimately vitiate the order itself.

17. The Wednesbury's Principle is the leading precept to determine such controversies relating to arbitrariness. The Constitutional Bench of the Supreme Court in *Rameshwar Prasad v. Union of India* [(1994) 3 SCC 1] stated that:

> "201. It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. (See: Smt. Shalini Soni and Ors. v. Union of India and Ors. 1980CriLJ1487).
> 202. The Wednesbury principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (*i*) it is based on wholly irrelevant material or wholly irrelevant consideration, (*ii*) it has ignored a very relevant material which it should have taken into consideration, or (*iii*)

it is so absurd that no sensible person could ever have reached to it."

18. Still in the case of *Tata Cellular v. Union of India* 1994 (6) SCC 615, the Supreme Court held that where the decision/action is vitiated by arbitrariness, unfairness, illegality, irrationality or unreasonableness, it will require judicial intervention and the Courts can set right the decision making process.

19. This doctrine covers various facets of arbitrariness. The Courts, more than often, have applied this principle to examine the merits or otherwise of the contentions. In the case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation 1947 (2) AELR 680 enunciating the aspects of unreasonableness in executive action of the public authorities, it was stated that if the power is exercised so as to give impression or inference to the Court that there has been unreasonableness in such action, it is taken in bad faith extraneous circumstances have been taken into consideration, there has been disregard of public policy and relevant consideration have been ignored then authorities would be said to have acted unreasonable. Lord Greene, M.R., expressing the unanimous view observed as under:

> "He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "Unreasonably." Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. WARRINGTON, L.J. I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head."

The aforesaid Wednesbury's principle has not only been adopted in various pronouncements by the Hon'ble Apex Court, but even its expanded principles have been applied extensively by other Courts. The apparent unreasonableness in executive action, whatever be its foundations, would normally invite chastisism upon judicial scrutiny. The requirement of fairness is in built in every rule and regulation be it an executive or an administrative act. This basic rule of law is ab antique and its application has been consistently expanded.

20. As already noticed, it is neither evident from the order nor from any records produced before the Tribunal that the finding returned in the impugned order that it was a hilly terrain was well reasoned. It appears to be a finding that has been recorded on the basis of certain conjectures and surmises. The relevant and material documents that had been produced by the appellant have been ignored. In other words, relevant considerations have been ignored while irrelevant and imaginary facts have been taken into consideration for arriving at the conclusion, which in our mind, cannot be sustained in view of the fundamental principle of Wednesbury. This clearly reflects the element of arbitrariness in the action of the respondent. The administrative action which is tainted with the element of arbitrariness cannot be sustained in law. An administrative order must be free of arbitrariness and bias. We cannot help but take note of the legal proceedings that have repeatedly taken place in the present case. On all those occasions, the order passed by the respondent was set aside on one ground or

the other. This Tribunal even directed the appellant to deposit Rs. 1.5 Lakhs in order to ensure remedying of the damage caused, if any, to the ecology or the environment around the site. This deposit of Rs. 1.5 Lakhs was made subject to the final order that may be passed by the authorities. The authorities have not even cared to touch upon that point in the impugned order. We are of the considered view that the authorities have compelled the appellant to approach the court and the Tribunal time and again, that too, without valid and good reasons. It is expected of a public authority to act in accordance with the law, fairly and without inducing the element of arbitrariness and bias. There is a specific obligation upon such authorities to ensure that they do not generate avoidable litigation. Hence, fairness in their action is a pre-requisite to ensure an efficacious discharge of their statutory obligations. In our considered view, the authorities, in the facts and circumstances of the present case, have not acted with complete fairness and have compelled the appellant to approach the courts and the Tribunal repeatedly, without any specific fault being attributed to him. Thus, he is entitled to receive the costs of the present proceedings.

21. For the reasons afore-recorded and while setting aside the order dated 29th January, 2013, we hereby direct the GCZMA to consider all the issues again, in accordance with law, and expeditiously. The question of the area falling under the jurisdiction of the Captain of Ports under the Indian Ports Act, 1908 as well as GCZMA having no jurisdiction was raised before the said Authority and has also been raised before us. We have intentionally left the

said question open to be answered by the said Authority when it deals with the matter in furtherance to this order.

22. The appellant may file additional documents, if any, within two weeks from the date of pronouncement of this order. The GCZMA shall, upon providing a hearing to the appellant as well as informing him of any other document that the Authority wishes to rely upon, pass the final order within four weeks thereafter. The entire proceedings must culminate into a final order within a period of six weeks and none of the parties will be entitled to any extension of time thereafter. In the facts of the present case, we allow this appeal with costs of Rs.25,000/- as payable by Respondent No.1, GCZMA to the appellant.

Justice Swatanter Kumar
Chairperson

Justice U. D. Salvi
Judicial Member

Dr.D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

Dr. R.C.Trivedi
Expert Member