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

**APPLICATION NO. 83/2013**

**WITH**

**M.A. NO. 214 OF 2013**

**In the matter of :**

M/s. Dhunseri Petrochem & Tea Ltd.
Dhunseri House,
4A Woodburn Park, Kolkata- 700 020,
Through Managing Director and CEO,
Mr. Biswanath Chattopadhyaya

.....Applicant

Versus

1. Union of India,
   Ministry of Environment and Forests
   Through Secretary,
   Paryavaran Bhawan, CGO Complex,
   Lodhi Road,
   New Delhi-110003.

2. The State of West Bengal,
   Through the Secretary,
   Department of Environment,
   Having its office at Block-"G",
   2nd Floor, Writers Building,
   Kolkata-700 001.

3. Chief Environment Officer
   And Member Secretary, SEIAA,
   Department of Environment,
   Government of West Bengal,
   Block 'G', Second Floor, Writers Building
   Kolkata-700 001.

4. West Bengal Pollution Control Board,
   Having office at Paribesh Bhawan,
   10A, Block 1A, Sector-3,

Bidhan Nagar,
Kolkata- 700 098.

.....Respondents

**Counsel for Applicants** :

Mr. Shyam Divan, Sr. Advocate with Mr. Sanjeev Kapoor, Ms. Nandini Khaitan, Mr. Snehal Kakrania, Mrs. Madhvi Divan, Mr. Sanjeev Kumar,
Advocates.

**Counsel for Respondents :**

Ms. Neelam Rathore and Mr. Vikramjeet Singh, Advocates, for Respondent No.1.

Mr.Bikas Kar Gupta, Advocate, for Respondent No.2 and 3.

Ms. Amita Agrawal with Ms.Asha Nayar Basu, Advocates, for Respondent no.4.

**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 16th, 2013**

**JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

By means of the present application filed under Section 18(1) read with Section 14 of the National Green Tribunal Act, 2010 (for short 'the NGT Act') the applicant seeks to challenge the legality and correctness of the communications-cum-orders dated, 6th March,

2013, 11th March, 2013 and 13th March, 2013 passed by Respondents No.1, 3 and 4 respectively.

**FACTS:**

2. We may now state the facts of the present case to which there is no serious dispute. The applicant is involved in the business of manufacturing of Polyethylene Terephthalate (PET) resins, that is used for the manufacture of food grade packaging materials including, containers for packaging of food and beverages for human consumption. This activity of manufacturing is carried on by the applicants on the plots situated at JL-126 Basudevpur, Mouza and JL-145 Paranchal Mouza, HPL Link Road, Haldia, West Bengal. The applicant has two processing plants on the said plots of land, one having a processing capacity of 600 tonnes per day and the other of 900 tonnes per day. The total area occupied by both the plants is stated to be nearly 77 acres. The first plant was commissioned in the year 2003. Prior to such commissioning in February 1998, the applicant had applied for taking No Objection/Consent for establishing the said plant which was duly granted by the Respondent No.4 on 17th August, 1998. At the initial stage, it was proposed to supply this plant with captive power through, Oil Fired Diesel Generator and the NOC granted by Respondent No 4 pertained to both of them. Thereafter, they applied for Environmental Clearance (for short 'EC') which was duly issued by the Respondent No.1 vide their letter dated, 24th April, 2000. Respondent No.4 on 3rd of January 2002 had even given an extension to the 'consent to establish' for this plant till 31st

December 2003 and on being granted an extension of the 'consent to establish' the applicant was granted 'consent to operate' for plant no.1 on 18th June, 2003. This plant commenced its production and operation on 1st September, 2003 after obtaining all the requisite clearances from the concerned authorities. Such clearances were thereafter extended from time to time. Even the consent to operate originally granted was renewed recently and is now valid till 31st May 2014.

3. It is the case of the applicant that the quality of resins which are being used by the applicant are also approved by the stringent standards of the Food and Drug Administration Standard of USA as well as that of the European Union Authority. The applicant in or around the year 2008, in order to substitute the Oil Fired Diesel Generator system for economic and other reasons, proposed to set up 8MW coal based captive power plant within the said plots of land for the purpose of operating the processing plant. With this in mind the applicant moved an application for establishing the 8MW Captive Power Plant. In the year 2009, the Terms of Reference were issued by the State Level Expert Appraisal Committee (SLEAC), West Bengal, which were complied with and the EC for the same was issued by Respondent No.4 vide its letter dated 12th April, 2010. In terms of the EIA Notification dated, 14th September, 2006 (for short 'Notification'), the power to issue environment clearances for notified industrial areas was given to the State Authorities and Haldia fell in the category of the industrial areas as notified by Haldia Development Authority. It is for this reason that the EC

dated 12th April, 2010 was issued by Respondent No.2. Having complied with all the basic requirements, the applicant on 3rd May, 2010 sought grant of 'consent to establish' for the 8MW coal based captive power plant which was issued on 14th May, 2010 by Respondent No.4. Thereupon, an application was moved by the applicant to the regional office of Respondent No.4 for 'consent to operate' for the existing processing plant with the duly established captive power plant. 'Consent to operate' was granted and the same was renewed on 20th October, 2010. According to the applicant, by issuance of such consent, the respondent accepted that the captive power plant formed an integral part of the processing plant. This consent was renewed from time to time and was last renewed on 13th August, 2012 extending the same upto 31st May, 2014.

4. In the meanwhile, the demand of the applicant's product having escalated, the applicant decided to increase its production by constructing the other plant. The applicant approached the Haldia Development Authority for a piece of land for the said expansion of its PET Resins Plant which was allowed and the applicant accordingly took such land on a long term lease of 90 years after paying a considerable premium. For the purpose of setting up the expansion of the existing plant by setting up the second plant which was for 3,15,000 TPA Bottle Grade PET Resin Plant and 10 MW Captive Power Plant, the applicant applied to the State Level Expert Appraisal Committee, West Bengal, for its clearance. Terms of Reference in this regard were finalized by the said Committee in and around April, 2010. Having obtained the EC from Respondent

No.2 on 16th November, 2010, the applicant on 25th November, 2010 duly applied for 'consent to establish' for the second plant, and the same was granted by Respondent No.2 on 31st January, 2011. Upon completion of the requisite formalities and complying with the conditions stated in the order of 'consent to establish', the applicant on 1st October, 2012 was issued a 'consent to operate', which was issued by the Respondent No.4. However, this consent was only to operate the processing plant i.e., 31,15,000 TPA Bottle Grade PET Resin Plant as the 10MW Coal Captive Power Plant proposed for supplying the power to the aforesaid second PET plant was not ready or even completed by that time. The second plant was commissioned on 15th November, 2012 and power was sourced from 8MW coal power plant that was used to supply power to the first plant as well as through the electricity board. Resultantly, the two PET plants and one coal captive plant were fully operational with due permissions and clearances from the concerned authorities. Further, according to the applicant, no complaints, whatsoever, were received from any authority and the plants were operating to the satisfaction of all concerned.

5. The applicant claims that it was shocked to receive a letter dated, 11th March, 2013 issued by the Respondent No.3 *inter alia* withdrawing/recalling the two environmental clearances dated, 12th April, 2010 and 16th November, 2010 granted in relation to 8MW coal based captive power plant and the second PET plant. This letter was issued to the applicant on the recommendations of the State Expert Appraisal Committee (SEAC). This letter purportedly

required immediate stopping of operation of the applicant's plants with an intimation of compliance of the same within 5 days. The West Bengal State Level Environment Impact Assessment Authority (for short 'SEIAA') mentioned in the letter that it was withdrawing the two environmental clearances granted to the applicant, while acting on the directions of the Ministry of Environment & Forests (MoEF), Government of India. On 6th March, 2013, according to the applicant, MoEF had informed the Chairman of the Pollution Control Board, West Bengal as well as the Member Secretary, Department of Environment, Government of West Bengal that the Ministry was unable to accept the replies submitted by the SEIAA regarding the issue of granting environmental clearance by it to the unit. As per the Notification, since the units were situated in a critically polluted area and thus, MoEF requested the Pollution Control Board and the State Government to examine the relevant issues and to initiate an enquiry against the officials concerned. The relevant paragraphs of the communication dated, 13th April 2013 read as under:

> "Reference is invited to the reply of West Bengal SEIAA vide letter no EN/2407/T-II-1/111/2009 dated 31.10.2012 in response to the Ministry's letter dated, 28.09.2012 (copy enclosed) regarding the issued raised by the Regional Officer of MoEF in connection with the grant of ECs by the West Bengal SEIAA for the projects cited above. The content of the above reply has been examined and the clarification provided therein the reply by the West Bengal SEIAA cannot be accepted by MoEF. It appears that whIle appraising the above projects, SEIAA West Bengal 2006 and circulars/O.Ms issued by the MoEF in connection with imposed moratorium on E.C. in critically polluted areas.
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> 2. In view of the above, the undersigned has been directed to request you that the environmental

clearances issued to the above referred projects by the West Bengal SEIAA should be withdrawn immediately and necessary direction maybe issued to the concerned industries not to undertake any construction/operation activity/ The compliance of the same maybe sent to this Ministry within 10 days from the issue of this letter.

3. Further, you are requested to examine the issue raised and necessary enquiry maybe initiated against the officials concerned for the grant of ECs, violating the provisions of EIA Notification, 2006 and appropriate action maybe taken and the report submitted to this Ministry within 30 days from the date of issue of this letter."

6. It further directed that the EC granted to the projects by SEIAA should be withdrawn immediately and necessary directions be issued to the concerned unit not to undertake any construction. Based upon this letter and without affording any opportunity to the applicant, vide letter dated 11th March, 2013, the Government of West Bengal, acting through the Member Secretary, SEIAA withdrew the two environmental clearances granted to the units on the one hand, while, on the other vide letter dated, 13th March, 2013, the Member Secretary, West Bengal Pollution Control Board advised the industry not to undertake any construction activity at the sites in question.

7. Aggrieved from the above three communications/orders, the applicant approached the High Court of Calcutta by filing a writ petition, being AST 41 of 2013 titled *Dhunseri Petrochem & Tea Ltd. & Anr. vs. State of West Bengal & Ors.* However, this writ petition was withdrawn by the applicant seeking liberty to file and approach

this Tribunal in accordance with law and the same was granted by the High Court.

8. We have already noticed that there is no serious dispute with regard to the factual matrix of the present case. Suffices it to say that Respondent Nos. 2, 3 and 4 filed their replies before the Tribunal. However, Respondent No.1 preferred not to file any reply. Respondent Nos. 2 and 3, in their reply, admitted the carrying on of business by the applicant, grant of permission by them and issuance of the communication dated 11th March, 2013. But, interestingly, these respondents have, in their reply *inter alia* stated as follows:

> "(e) The Environment Clearance was granted by SEIAA, a body constituted by GOI. The said SEIAA functions as per the guideline of GOI. However, the State Government have no objections, in the public interest if the industries operate, provided they follow environmental laws and the directions of Government of India and its constituted authorities."

9. Respondent No.4 generally denied each and every allegation but opted not to give any specific facts in its reply. It is only stated that the MoEF, Government of India and its Director, vide their letter dated, 6th March, 2013, *inter alia,* directed to immediately withdraw the environmental clearances issued to the concerned projects, issue necessary directions to the concerned units not to undertake any construction/operation activity and report the compliance of such directions to the Ministry within ten days. It requires to be noticed that even according to Respondent No.2, the projects relating to 'public interest' fell outside the purview of moratorium

imposed and as such the project being in 'category B' the permission was granted. Relevant paragraphs of the reply reads as under: -

> "I state that it is extremely pertinent to mention that earlier a Memo was issued by the Ministry of Environment and Forests to the Respondent No.2 vide No.Z-11011/3/2011-JA-II(I) dated April 24, 2011. That pursuant thereto a point by point reply was issued by the Chief Environment Officer, Deperatment of Environment, Government of West Bengal vide No. EN/1933/T-II-1/111/2009 dated June 29, 2011. It was stated in the said letter that a letter was issued by the Respondent No.1 dated February 10, 2010, interalia, stating that the projects of public interests have been kept outside the purview of the moratorium imposed upon Haldia and that if there are specific projects of public interest which falls under category 'B', the same can be considered under the powers delegated to State Environment Impact Assessment Authority (SEIAA). It was also stated in the letter that pursuant thereto, the State Environment Impact Assessment Authority (SEIAA) felt that the proposal can be pressed further if the relevant department, being the Commerce and Industries Department, Government of West Bengal, takes a view of the project being one of public interest. The views of the said Department were solicited and the Department vide note dated April 06, 2010 certified the project to be of public interest."

10. On the above premise the contentions of the applicant are:

a. All the three impugned communications/orders are violative of the principles of natural justice. The applicant was served with no notice to show cause and was not granted any opportunity of being heard at any stage by any of the three authorities.

b. None of the communications/orders record any reasons much less justifiable reasons and they suffer from infirmity

and non-application of mind. It is the communication dated, 6th March, 2013 which besides being violative of principles of natural justice is not a 'direction' as contemplated under Section 5 of the Environment (Protection) Act, 1986 (for short the 'Act') and is not binding on other respondents. At best it could be an advice to examine and make an enquiry in accordance with law rather than automatically pass the impugned communications dated, 11th March, 2013 and 13th March, 2013. The 'industry' squarely falls in category 'B' of the Notification and the EC so granted could not be recalled in the present manner, particularly when it was not even in public interest to do so.

c. The Memorandum dated, 13th January, 2010 is beyond the jurisdiction of the powers vested in the authorities under the provisions of the Act.

d. The purported imposed moratorium that imposes an embargo on grant of environmental clearance is beyond the provisions of the Act. Further, it is not based on the potential threats of an individual project but on CEPI index of particular area and such circular/notification is beyond the provisions of the said law.

**Consideration of contentions on merits :**

11. It is not only undisputed but, in fact is fairly admitted on behalf of the Respondents No.1, 2, 3 and 4 that the applicant was not granted any opportunity of hearing before the impugned

communications/orders were passed. The violation of principles of natural justice, thus, is conceded. The applicant had admittedly obtained all relevant clearances in relation to obtaining consent for establishment as well as for operation of the two processing plants and the 8MW coal captive power plant. These consents are in force till the 31st May 2014. The applicant has been carrying on its business manufacturing activity for more than 10 years and according to the applicant no complaint had ever been received either from authority or other relevant quarter. That being so, the short question that requires the consideration of this Tribunal is whether the applicant was entitled to grant of hearing, whether in the facts of the case, compliance to the principles of natural justice was mandatory before the impugned communication/orders were passed by the respective respondents. We have no hesitation in answering this question in the affirmative. The impugned communication and directions have not only ancillary civil consequences for the applicant but in fact his entire business which he has been carrying on for the last more than ten years has to be shut down in all respects. It is not a mere stopping of an industrial activity but is even going to affect the families of large number of workmen who are working in these industries. The impugned communications/orders are of such serious nature that compliance to the principle of *audi alteram partem* cannot be obviated. We may refer to a recent judgment of this Tribunal in the case of *M/s. Sesa Goa vs. State of Goa and Ors.*, Application No. 49 of 2012, pronounced on 11th April, 2013 where after noticing the various

judgments of the Supreme Court in relation to adherence to the rule of *audi alteram partem*, the Tribunal held as under: -

> "17. It must be noticed that the aim of rules of natural justice is to secure justice, or to put it negatively, to prevent miscarriage of justice. Despite the fact that such rules do not have any statutory character, their adherence is even more important for the compliance of the statutory rules. The violation of the principles of natural justice has the effect of vitiating the action, be it administrative or quasi-judicial, in so far as it affects the rights of a third party. Flexibility in the process of natural justice is an inbuilt feature of this doctrine. Absolute rigidity may not further the cause of justice and therefore adoption of flexibility is important for applying these principles.
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> 18. A Court or a Tribunal has to examine whether the principles of natural justice have been violated or not as a primary consideration, whenever and wherever such an argument is raised. Test of prejudice is an additional aspect. Normally, violation of principles of natural justice, like non-grant of hearing, would vitiate the action unless the theory of 'useless formality' is pressed into service and is shown to have a complete applicability to the facts of the case. We may notice that this theory, though has been accepted by the Courts, but is rarely applied.
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> 19. In the case of Canara Bank v. A.K. Awasthi (2005) 6 SCC 321, the Supreme Court compared natural justice to common sense justice. It emphasized on the compliance with the principles of natural justice when a quasi-judicial body embarks upon determination of disputes between the parties or when an administrative action involving civil consequences is in issue. The Court held:
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> > "9. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be

secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

10. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p. 420)

“Even God himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam’ (says God), ‘where art thou? Hast

thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?' " Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

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

12. What is meant by the term "principles of natural justice" is not easy to determine. Lord Summer (then Hamilton, L.J.) in R. v. Local Govt. Board 3 (KB at p.199) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Spackman Lord Wright observed that it was not desirable to attempt "to force it into any Procrustean bed" and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give "a full and fair opportunity" to every party of being heard."

20. The above findings of the Court puts one matter beyond ambiguity, i.e., the affected party is entitled to full and fair opportunity, and such an opportunity, shall, both in fact and in substance, be granted to ensure that justice is not only done but also seems to have been done.

21. In the present case we are concerned with the application and the various facets of the maxim *audi alteram partem*. The Courts have consistently

emphasized that this is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power.

22. The doctrine of *audi alteram partem* has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the authority concerned should provide a fair and transparent procedure and lastly, 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:
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> > "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'."
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> 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."

24. The recording of reasons by the administrative and quasi judicial authorities is a well-accepted norm and its compliance has stated to be mandatory. Of course, reasons recorded by such authorities may not be like judgments of courts, but they should precisely state the reasons for rejecting or accepting a claim which would reflect due application of mind. The Bombay High Court in the case of Pipe Arts India Pvt. Ltd v. Gangadhar Nathuji Golmare, 2008 (6) MLJ 280 held:

> "8. The Supreme Court and different High Courts have taken the view that it is always desirable to record reasons in support of the Government actions whether administrative or quasi-judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any order, particularly, the order which can be subject matter of judicial review, is reasoned one. Even in the case of Chabungbambohal Singh v.Union of India and Ors: 1995(1) SCALE 857,the Court held as under:
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> > His assessment was, however, recorded as "very good" whereas qua the appellant it had been stated unfit. As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated unfit, and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made.
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> 9. The requirement of recording reasons is applicable with greater rigour to judicial proceedings. Judicial order determining the rights of the parties essentially should be an order supported by reasoning. The order

must reflect what weighed with the Court in granting or declining the relief claimed by the applicants.

10. In the case of Jawahar Lal Singh v. Naresh Singh and Ors: 1987 CriLJ 698, accepting the plea that absence of examination of reasons by the High Court on the basis of which the trial Court discarded prosecution evidence and recorded the finding of an acquittal in favour of all the accused was not appropriate, the Supreme Court held that the order should record reasons. Recording of proper reasons would be essential, so that the Appellate Court would have advantage of considering the considered opinion of the High Court on the reasons which had weighed with the trial Court.

11. May be, while entertaining the interim applications, the orders are not expected to be like detailed judgments in final disposal of the matter, but they must contain some reasons which would provide adequate opportunity and ground to the aggrieved party to assail that order in appeal effectively.

12. In the case of State of Punjab and Ors. v. Surinder Kumar and Ors. : [1992] 194 ITR 434(SC) , while noticing the jurisdictional distinction between Article 142 and Article 226 of the Constitution of India, the Supreme Court stated that powers of the Supreme Court under Article 142 are much wider and the Supreme Court would pass orders to do complete justice. The Supreme Court further reiterated the principle with approval that the High Court has the jurisdiction to dismiss petitions or criminal revisions in limini or grant leave asked for by the petitioner but for adequate reasons which should be recorded in the order. The High Court may not pass cryptic order in relation to regularisation of service of the

respondents in view of certain directions passed by the Supreme Court under Article 142 of the Constitution of India. Absence of reasoning did not find favour with the Supreme Court. The Supreme Court also stated the principle that powers of the High Court were circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the basis of whims or subjective opinion varying from Judge to Judge.

13. In the case of Hindustan Times Ltd. v. Union of India and Ors. : [1998]1SCR4 , the Supreme Court while dealing with the cases under the Labour Laws and Employees' Provident Funds and Miscellaneous Provisions Act, 1952 observed that even when the petition under Article 226 is dismissed in limini, it is expected of the High Court to pass a speaking order, may be briefly.

14. Consistent with the view expressed by the Supreme Court in the afore-referred cases, in the case of State of U.P. v. Battan and Ors. (2001)10SCC607 , the Supreme Court held as under:

> The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the High Court order not sustainable.

15. Similar view was also taken by the Supreme Court in the case of Raj Kishore Jha v. State of Bihar and Ors. JT 2003 (Supp.2) SC 354.

16. In a very recent judgment, the Supreme Court in the case of State of Orissa v. Dhaniram Luhar 2004CriLJ1385 while dealing with the criminal appeal, insisted that the reasons in support of the decision was a cardinal principle and the High Court should record its reasons while disposing of the matter. The Court held as under:

> 8. Even in respect of administrative orders Lord Denning, M.R. In Breen v. Amalgamated Engg. Union observed:
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> > The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a

speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

17. Following this very view, the Supreme Court in another very recent judgment delivered on February, 22, 2008, in the case of State of Rajasthan v. Rajendra Prasad Jain Criminal Appeal No. 360/2008 (Arising out of SLP (Cri.) No. 904/2007) stated that "reason is the heartbeat of every conclusion, and without the same it becomes lifeless."

18. Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the Us has a right of appeal and, therefore, it is essential for them to know the considered; opinion of the Court to make the remedy of appeal meaningful. It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only desirable; but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of; reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled cannon of legal jurisprudence that the Courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such

judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion. Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the Article, Black robed Bureaucracy or Collegiality under Challenge, (42 MD.L. REV. 766, 782 (1983), observed as under:

> My own guiding principle is that virtually every appellate decision requires some statement of reasons. The discipline of writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the Court that a bare signal of affirmance, dismissal, or reversal does not.

19. The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation. Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:

> When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of

how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid.

20. The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinized by the Appellate Court. The reasons indicated by the Court could be accepted by the Appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on September 13, 2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said,

> The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written:
>
> (1) to clarify your own thoughts;
> (2) to explain your decision to the parties;
> (3) to communicate the reasons for the decision to the public; and
> (4) to provide reasons for an appeal Court to consider.
>
> 22. Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120, the Court went to the extent of observing that "Failure to give reasons amounts to denial of justice". Reasons are really linchpin to administration of justice. They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons is the soul of the decision and its absence would render the order open to judicial chastism."

25. 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 preposition 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.

26. 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 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."

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.

28. Another very important aspect of recording of reasons by administrative or quasi-judicial authority is that the reasons so recorded must have a nexus and should deal with the grounds which have been raised by the affected party for consideration by such authority. Recording reasons without dealing with such contentions would tantamount to non-recording of reasons. The authority concerned is expected to apply its mind to all aspects of a case but most importantly to the contentions raised by the affected party in relation to the grounds or supporting arguments without which no adverse order could be passed against such party. If such grounds are not dealt with in the order passed by the authority, neither the party nor the appellate authority would be able to comprehend as to why their contentions have been rejected, as the reasons are harbinger between the mind of the maker of the order, to the controversy in question and the decision or conclusion arrived at. This is the acid test for examining fair opportunity and proper application of mind by the authority concerned.

29. The importance of the doctrine of natural justice is evident from the fact that with the development of law it has been treated as an ingredient of Article 14 of the Constitution of India. 'Natural Justice' means a fair process. A fair process essentially must exclude arbitrariness and exclusion of arbitrariness would ensure equality and equal treatment before law. This new dimension of *audi alteram partem* as a facet of natural justice has been noticed by D.D. Basu, Shorter Constitution, 44th Edition 2012:

> "Once it is acknowledged that non-arbitrariness is an ingredient of Art. 14 pervading the entire realm of State action governed by Art. 14, it has come to be established, as a further corollary , that the audi alteram partem facet of natural justice is also requirement of Art. 14, for, natural justice is the antithesis of arbitrariness. The right of audi alteram partem is a valuable right recognized under the Constitution of India wherein it is held that, the principle of the maxim which mandates that no one should be condemned unheard, is a part of the rules of natural justice. Such right of hearing conferred by a statute cannot be taken away even by Courts."

30. Reference could also be made to the judgments in the case of DTC Mazdoor Union v. DTC, AIR 1991 SC 101 and Basudeo Tiwari v. Sido Kanhu University, (1998) 8 SCC 194."

12. On a clear analysis of the above principles, the only possible conclusion that emerges there from is that there has to be compliance to the principles of natural justice unless it is specifically or by necessary implication excluded by the provisions of law. Under the provisions of Section 5 of the Act, the Central Government is empowered to issue directions, in exercise of its powers and performance of its functions, which will be binding on

any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. This power is further elucidated in the language of Rules 4 and 5 of the Environment (Protection) Rules, 1986 (for short the 'Rules'). Both these rules contemplate that a notice should be issued to a person against whom a direction is proposed to be issued. However, under the proviso to Rule 4(3-b) of the Rules, the authority can pass orders without affording hearing to the affected party provided, such party has been heard on an earlier occasion by some other authority and an order has been passed thereof, in accordance with law. Similarly, under Rule 5(4) of the Rules, if the Central Government records its opinion that it is in 'public interest' not to grant a hearing to the affected party, then it can exclude the principles of natural justice and pass direction(s) in accordance with law.

13. Concededly, the present case does not fall in either of the above exceptions. It is not even the case of any of the respondents before the Tribunal that the government or authorities have exercised the power vested in them or take recourse to such provisions of law in terms of the exceptions under the Rules. Further, it is also not the case of the respondents before us that they had complied with the provisions of natural justice before passing the impugned orders/directions.

14. In the present case, admittedly, there is flagrant violation of the principles of natural justice and serious prejudice has been caused to the applicant as a result of non-compliance to the fundamental

principles of rule of law and which inevitably lead the applicant to shut down its entire business activity.

15. Another contention ancillary to the above application, which has merit, is that the communication/order dated, 6th March 2013 was not a direction under Section 5 of the Act and as such was not binding. Thus, the State of West Bengal as well as the West Bengal Pollution Control Board were under an obligation to examine the matter, grant opportunity to the applicant of being heard and then alone could they have passed any order or direction if any.

16. If one examines the contents of the communication/order dated, 6th March, 2013, it is clear that it is not a direction issued by the MoEF in exercise of its powers under Section 5 of the Act read with Rule 5 of the Rules. In fact, the learned counsel appearing for MoEF took a clear stand on behalf of the Ministry that the communication dated, 6th March, 2013 is not a direction under Section 5 of the Act, but was in fact advisory in nature, requiring the State of West Bengal and the Pollution Control Board, West Bengal, to examine the matter in accordance with law.

17. It is unquestionable that the MoEF has neither complied with the requirements nor followed the procedure prescribed under Section 5 of the Act read with Rule 5 of the Rules. If this communication was advisory in nature then certainly the authority issuing the said letter should have been more careful in its language. The language is suggestive of a direction while, in fact, it was not a 'direction' in law within the ambit of Section 5 of the Act

and Rule 5 of the Rules. If it was advisory, then both Respondent Nos.3 and 4 should have adhered to the principles of natural justice and acted in conformity to the basic rule of law. The default, in both events, vitiates the communications dated, 6th March, 2013 as well as the communications dated 11th March, 2013 and 13th March, 2013 which were issued in a mechanical manner. These communications/orders suffered from the infirmity of non-application of mind and were passed in violation to the principles of natural justice.

18. The core controversy before the authorities in the present case was whether the projects of the applicant were an 'industrial unit of public importance' and whether the unit being one of public interest, was entitled to be dealt under 'Category B' in terms of the Circular of 2010. Further, whether the declaration by the Member Secretary (Commerce and Industry), Govt. of West Bengal, that the industrial unit was a public interest unit, was unsustainable. Lastly, whether the applicant could be faulted for having made such huge investment on such declarations by the State Government, and if so, to what effect.

19. To deal with such contentious issues of significance and recording reasons in support thereof would be the requirement of law in the facts of the present case. As noticed above, administrative authorities are required to record reasons in support of their decisions which are likely to vest parties with civil consequences. In the present case, there is no reference in the communication dated, 6th March, 2013 as to what was the stand of

the respective parties and how the MoEF does not find such stand to be justifiable. The only thing that has been recorded is that the expansion of the plant cannot be accepted by MoEF and it appears that SEIAA, West Bengal, has not followed the general conditions of the Notification. Both these issues are unsupported by any reasoning. In our considered view, the Director and even the competent authority issuing the communication dated, 6th March, 2013 should have exercised greater care and ought to have recorded appropriate reasons, that too, after providing an opportunity to the applicant of being heard, rather than issuing the impugned communications/orders, having serious and far-reaching consequences on the applicant. Also, the other two communications dated 11th March, 2013 and 13th March, 2013 have been passed by the Respondent Nos. 3 and 4 respectively, apparently, without any application of mind or recording of reasons and on the contrary, in a mechanical manner. Thus, we have no hesitation in setting aside all the three impugned communications dated 6th March, 2013, 11th March, 2013 and 13th March, 2013 of Respondent No. 1, 3 and 4 respectively.

20. As far as the other two contentions are concerned, we do not propose to examine the merit or otherwise thereof as it will be appropriate for the concerned authorities in the MoEF as well as the authorities at the State level to examine and decide the issues after hearing the applicant. Those contentions are specifically left open.

21. Therefore, for the reasons afore-recorded and while setting aside and quashing the three impugned communications/orders

dated, 6th March, 2013, 11th March, 2013 and 13th March, 2013, we remand the matter to the MoEF for passing an order afresh after providing an opportunity to file replies and of being heard to the, State of West Bengal, Pollution Control Board, State of West Bengal and the applicant. The hearing shall be provided by an Officer not less than a Secretary or an Additional Secretary of MoEF. We also issue a caution to the MoEF that it should pass orders of such grave consequences with greater responsibility, upon recording reasons and in accordance with the principles of *audi alteram partem.*

22. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

**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**

New Delhi
May 16th, 2013