BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
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ORIGINAL APPLICATION NO. 509 OF 2014
AND
M.A. NOS. 880 OF 2014 & 881 OF 2014

IN THE MATTER OF:

M/s. Laxmi Suiting
20/5(1), Heavy Industrial Area, Jodhpur
Through its Proprietor–Gautam Kankariya
S/o Shri Sayar Chand Kankariya,
R/o - 20/5(1), Heavy Industrial Area,
Jodhpur

..... **Applicant**

Versus

1. The Chairman,
   Rajasthan State Pollution Control Board-Jaipur
   Through its Member Secretary,
   4, Industrial Area, Jhalana Dungari,
   Jaipur (Raj)

2. The Regional Officer,
   Rajasthan State Pollution Control Board-Jaipur
   Plot No. 2, Marudhar Industrial Area,
   Phase-I, Basni, Jodhpur.

3. The Chairman,
   Rajasthan Industrial Investment Corporation
   Udhyog Bhawan, Tilak Marg, Jaipur (Raj)

4. The Chairman,
   Central Pollution Control Bord,
   Parivesh Bhawan, CBD-cum-Office Complex,
   East Arjun Nagar, New Delhi -110 032.

5. The Jodhpur Pradushan Niwaran Trust,
   Jodhpur,
   Through its Managing Trustee, Plot No.1,
   Phase–II, Sangaria, Jodhpur.

.....Respondents

Counsel for Applicant:
Mr. Sunil Joshi, Mr. Kapil Joshi, Advocates

Counsel for Respondents:
Mr. Manoj Kumar Agarwal, Advocate for RSPCB.

JUDGMENT

PRESENT:
Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Dr. G.K. Pandey (Expert Member)
Hon'ble Mr. B.S. Sajwan (Expert Member)

Reserved on 11th December, 2014
Pronounced on 13th January, 2015

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

Jodhpur Pradushan Niwaran Trust (JPNT) vide its letter of demand/order dated 27th October, 2014 demanded an additional sum of Rs. 3,00,000/- (Rupees Three Lakhs only) from the applicant herein on the ground that it had upgraded its Common Effluent Treatment Plant (for short 'CETP'). This was done with the purpose of ensuring adequate capacity of the CETP to enable JPNT to allot the discharge capacity to the new applicants of Rajasthan Industrial Investment Corporation (RIICO). The applicant has challenged the legality and correctness of this order, *inter alia*, but mainly on the following grounds:

(a) The order has been passed in violation of the principles of natural justice as no liability, much less a financial liability, can be fastened on any person without providing him an opportunity of being heard.

(b) The order of the Trust is in direct conflict with the judgment of the Tribunal dated 1st May, 2014.

In the submission of the applicant, thus, the impugned order is liable to be set aside.

2. The learned counsel appearing in other matters on behalf of the Rajasthan Pollution Control Board, Respondent No.1 on the direction of the Tribunal had put in appearance.

3. In view of the approach that we propose to adopt and the order to be passed in this case, it is not necessary for us to direct issuance of notice to other respondents. Firstly, from the impugned order itself, it is evident that no opportunity of being heard has been granted to the applicant. It is a settled canon of law that the authorities which are passing orders that are likely to adversely affect the rights of third parties or create a liability upon them, financial or otherwise, should provide them with an opportunity of being heard, unless the relevant rules exclude such hearing specifically. The counsel for the applicant has rightly relied upon the judgment of the Tribunal in the case of *M/s. Sesa Goa Limited and Anr. v. State of Goa & Ors*, (2013) All India NGT Reporter (1) PB 55. In this case, the Tribunal has held as under:

> "14. A Constitution Bench of the Supreme Court in the case of ***Swadeshi Cotton Mills vs. Union of India*** [(1981) 1 SCC 664] stated that:
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> > "The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth". In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction

between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are: (i) audi alteram partem and (ii) nemo judex in re sua."

15. The above two maxims have attained a definite meaning, connotation in law and their contents as well as implications are well established and firmly understood. These, nevertheless are not statutory rules. Each one of these rules leads to charges with exigencies of different situations. They do not apply in the same manner to situations which are not alike. They are not immutable but flexible. These rules can be adapted and modified by statutes, statutory rules and also by constitution of a Tribunal which is to decide a particular matter and the rules by which such Tribunal is governed. In England the law in this regard is not different from the law in India. In ***Norwest Holst Ltd. vs. Secretary of State for Trade*** (1978) 3 All England Reports 280, Ormond LJ observed: "The House of Lords and this Court have repeatedly emphasized that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case."

16. In the case of ***Union of India v. Tulsiram Patel*** (1985) 3 SCC 398, another Constitution Bench of the Supreme Court stated: "that the question whether requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions."

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.

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."

4. Following the above principle, we are of the considered view that the applicant was entitled to be heard in compliance to the Principles of Natural Justice, before the liability of paying Rs. Three Lakhs could be ordered to be put on the said applicant. Thus, he is entitled to hearing in accordance with law.

5. The other contention raised on behalf of the applicant also has merit. In the judgment of the Tribunal dated 1st May, 2014, in *M/s Laxmi Suitings v. State of Rajasthan and Ors.* under clause 8 of the directions contained in paragraph 84 of the judgment, it had been stated that all the industrial units operating in and around the industrial estate and even those operating in non-conforming areas without consent of the Board shall be liable to pay a sum of Rs. 5 lakhs each to the State Government or Board for causing pollution during all these years and having failed to take

appropriate measures and establish anti-pollution devices, as required under the law. This shall be a one-time payment on the basis of 'Polluter Pays Principle'. The amount so collected from all the units shall be utilized exclusively for upgradation/expansion of the existing CETP and for establishment and development of new industrial estate and CETP in future.

6. The counsel for the applicant has also relied upon the recent order passed by this Tribunal in the case of *M/s. Himca Textiles v. Chairman Rajasthan State Pollution Control Board,* Application No. 514/2014, decided on 4th December, 2014 by the Principal Bench, National Green Tribunal, wherein the matter had been remanded to the Managing Trustee of the Jodhpur Pradushan Nivarak Trust for hearing in accordance with law and for passing appropriate orders in regard to the direction for payment of an additional sum of Rs. 3 lakhs, over and above the sum of Rs. 5 lakhs that had been paid by the applicant.

7. The applicant is entitled to the benefit of the order of the Tribunal in the case of *M/s. Himca Textiles* (supra). The applicant is also entitled to the relief claimed, as both the contentions raised by the applicant have merit.

8. Thus, for the reasons afore-recorded, we allow this application only to the limited extent that the order dated 27th October, 2014, of the Jodhpur Pradushan Nivarak Trust is set aside, with specific opportunity to the respondent no. 5 to pass an order afresh, after hearing the applicant and in view of what has been stated in the

judgment of the Tribunal dated 1st May, 2014 in M/s Laxmi Suiting v. State of Rajasthan and Ors.

9. We direct the applicant to appear before the Managing Trustee of Respondent No. 5 on 28th January, 2015 at 11.00 a.m. and submit his reply, if any, treating the order dated 27th October, 2014 as a notice to show cause.

Respondent No. 5 shall hear the applicant and pass order in accordance with law within two weeks thereafter.

10. The application is allowed to the limited extent afore-indicated and with the above directions. However, we leave the parties to bear their own costs. The main application stands disposed of accordingly.

M.A. Nos. 880/2014 (for production of documents) & 881/2014 (for stay)

11. Both these application do not survive for consideration as the main application stands disposed of. Resultantly, both these applications are also disposed of as having become infructuous.

Justice Swatanter Kumar
Chairperson

Dr. G.K. Pandey
Expert Member

Mr. B.S. Sajwan
Expert Member

New Delhi
13th January, 2015