NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 347 of 2014

1. Bharat Aluminium Company Captive Power Plant P.O. Balco Nagar, Korba C.G.

---- Petitioner

Versus

1. Municipal Corporation Korba, through Its Commissioner Municipal Corporation Korba C.G.

2. State Of Chhattisgarh Through The Secretary, Department Of Urban Development, D.K.S. Bhawan, District - Raipur CG

---- Respondent

And

WA No. 204 Of 2015

1. Chhattisgarh State Power Generation Company Limited Hasdev Thermal Power Project Through Executive Engineer, Civil & Maintenance, Korba (West), Korba (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Urban And Town Planning Department, Now New Mantralaya, New Raipur (Chhattisgarh)
2. Municipal Corporation, Korba Through Commissioner, Municipal Corporation, Korba (Chhattisgarh)

---- Respondents

And

WA No. 178 Of 2015

1. Chhattisgarh State Power Generation Company Limited Hasdev Thermal Power Project Through Executive Engineer, Civil & Maintenance, Korba (East), Korba (C.G.)

---- Petitioner

Vs

1. State Of Chhattisgarh, Through The Secretary, Urban And Town Planning Department, Now New Mantralaya, New Raipur (C.G.)

2. Municipal Corporation, Korba Through Commissioner, Municipal Corporation, Korba (C.G.)

---- Respondents

And

WA No. 348 Of 2014

1. Bharat Aluminium Company Limited P.O. Balco Nagar, Korba C.G.

---- Petitioner

Vs

1. Municipal Corporation Korba, Through Its Commissioner Municipal Corporation Korba C.G.

2. State Of Chhattisgarh Through The Secretary, Department Of Urban Development, D.K.S. Bhawan, District - Raipur Cg

---- Respondents

And

WA No. 352 Of 2014

1. South Eastern Coalfields Ltd. Through Its Chief General Manager South Eastern Coalfields Limited Kusmunda Area Distt. Korba C.G.

---- Petitioner

Vs

1. Municipal Corporation, Korba Through Its Commissioner Korba, C.G.

2. State of Chhattisgarh Through The Secretary, Department of Urban Development, D.K.S. Bhawan, District - Raipur CG

---- Respondents

And

WA No. 357 Of 2014

1. Municipal Corporation, Korba Through Commissioner, Municipal Corporation, Korba, Dist Korba, CG

---- Petitioner

Vs

1. State Of Chhattisgarh, through Secretary, Urban And Town Planning Department, Dks Bhawan, Raipur, Dist Raipur, Cg

2. Chhattisgarh State Power Generation Company Ltd Hasdev Thermal Power Project, Through Executive Engineer, Civil & Maintenance Darri, Korba (West), Dist Korba, CG

---- Respondents

And

WA No. 358 Of 2014

1. Municipal Corporation, Korba Through Its Commissioner, Municipal Corporation Korba , Distt. Korba C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh, through The Secretary, Department Of Urban Administration Mantralaya Mahanadi Bhawan New Raipur C.G.
2. NTPC Ltd Korba Super Thermal Power Station P.O. Vikas Bhawan Jamnipali, Distt. Korba C.G.

---- Respondents

And

WA No. 359 Of 2014

1. Municipal Corporation, Korba Through Its Commissioner, Municipal Corporation Korba , Distt. Korba C.G.

---- Petitioner

Vs

1. State of Chhattisgarh Through The Secretary, Department Of Urban Administration Mantralaya Mahanadi Bhawan New Raipur C.G.
2. Chhattisgarh State Power Generation Company Limited Through Executive Engineer Civil & Maintenance Korba East Korba C.G.

---- Respondents

And

WA No. 363 Of 2014

1. South Eastern Coalfields Limited Through Its Chief General Manager, Now General Manager South Eastern Coalfields Ltd, Korba Area, Dist Korba, CG

---- Petitioner

Vs

1. Municipal Corporation, Korba, Through Its Commissioner, Korba, Dist Korba, CG
2. State Of C.G. Through Its Secretary, Department Of Urban Development,

Mantralaya, Mahanadi Bhawan, Naya Raipur, Dist Raipur, CG

---- Respondents

And

WA No. 365 Of 2014

1. Municipal Corporation, Korba Through Its Commissioner, Korba, Dist Korba, CG

---- Petitioner

Vs

1. Bharat Aluminium Company Captive Power Plant, PO Balco Nagar, Korba, Dist Korba, CG

2. State Of Chhattisgarh Through Its Secretary, Department Of Urban Development, Mantralaya, Dks Bhawan, Raipur, Present Address Mahanadi Mantralaya, Naya Raipur, PO & PS Naya Raipur, Dist Raipur, CG

---- Respondents

And

WA No. 366 Of 2014

1. Municipal Corporation, Korba Through Its Commissioner, Korba, Dist Korba, CG

---- Petitioner

Vs

1. South Eastern Coalfield Limited, S/o through Its Chief General Manager, South Eastern Coalfield Limited, Korba Area, Dist Korba, CG

2. State Of Chhattisgarh Through Its Secretary, Department Of Urban Development, Mantralaya, DKS Bhawan, Raipur, Present Address Mahanadi Mantralaya, Naya Raipur, PO & PS Naya Raipur, Dist. Raipur, CG

---- Respondents

And

WA No. 367 Of 2014

1. Municipal Corporation, Korba through Its Commissioner Municipal Corporation Korba C.G.

---- Petitioner

Vs

1. South Eastern Coalfield Limited S/o Through Its Chief General Manager, South Eastern Coalfield Ltd, Kusmunda Area, Dist Korba, CG

2. State of Chhattisgarh Through Its Secretary, Department Of Urban Development, Mantralaya, Dks Bhawan, Raipur, Present Address Mahanadi Mantralaya, Naya Raipur, PO & PS Naya Raipur, Dist Raipur, CG

---- Respondent

And

WA No. 368 Of 2014

1. Municipal Corporation, Korba Through Its Commissioner, Korba, Dist Korba, CG

---- Petitioner

Vs

1. Indian Oil Corporation Ltd.(IBP Division), Industrial Explosive Plant, Gopalpur, Korba, Dist Korba, Cg

2. State Of Chhattisgarh Through Its Secretary, Department Of Urban Development, Mantralaya, DKS Bhawan, Raipur, Present Address Mahanadi Mantralaya, Naya Raipur, PO & PS Naya Raipur, Dist Raipur, CG

---- Respondents

And

WA No. 369 Of 2014

1. Municipal Corporation Korba Through Its Commissioner, Korba, Dist Korba, Cg

---- Petitioner

Vs

1. Bharat Aluminium Company Limited And Anr. S/o Po Balco Nagar, Korba, Dist Korba, CG

2. State Of Chhattisgarh Through Its Secretary, Department Of Urban Development, Mantralaya, Dks Bhawan, Raipur, Present Address Mahanadi Mantralaya, Naya Raipur, PO & PS Naya Raipur, Dist Raipur, CG

---- Respondents

And

WA No. 370 Of 2014

1. N.T.P.C. Ltd. Korba Super Thermal Power Station Po Vikas Bhawan Jamnipali Dsit. Korba Cg

---- Petitioner

Vs

1. Municipal Corporation, Korba Through Its Commissioner Korba CG
2. State Of Chhattisgarh Through Its Secretary Deptt. Of Urban Development Mantralaya Mahandi Bhawan Raipur CG

---- Respondents

For Appellants:	Dr. N.K. Shukla, Sr. Advocate with Shri Shailendra, Shri Vinod Deshmukh, Shri Sudeep Kumar Agrawal, & Shri Varun Sharma, Advocates for the respective appellants.
For Respondents:	Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal & Shri B.D. Guru, for the Municipal Corporation, Korba. Shri Gary Mukhopadhya, Dy. Government Advocate for the State of Chhattisgarh. Shri N.Naha Roy, Advocate for the Indian Oil Corporation.

Hon'ble The Chief Justice
Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

Per Navin Sinha, Chief Justice

14/8/2015

1. The present batch of writ appeals arise out of a common order dated 12.8.2014 passed in W.P. (T) No.774/2010 and analogous writ petitions. The writ applications have been allowed in part leading to appeals and cross appeals. Since the primary facts and questions of law involved in all the appeals are common and related, they have been heard together and are being disposed together.

2. The Learned Single Judge held that Section 136 (i) of the Chhattisgarh Municipal Corporation Act (hereinafter referred to as 'the Act') being a taxing statute called for a strict interpretation. The appellant companies were not eligible for 50% tax exemption on their residential properties in occupation of its employees. The power in the Municipal Corporation for reassessment of self assessed property tax return for previous years by scrutiny under Section 173 of the Act read with Rule 11 of the Chhattisgarh Municipality (Determination of annual letting value of building/lands)Rules,1997 (hereinafter referred to as 'the Rules) had to be done within reasonable time. The exercise done belatedly for the previous years was bad in law.

3. Learned Senior Counsel, Dr. Shukla making the lead argument on behalf of the appellant companies submitted that property tax returns were duly filed in time based on self assessment for the years in question from 2000-2001 to 2009-2010. The appellant companies were wrongly being denied exemption for its residential properties occupied by its own officers by retrospective re-assessment. The exemption was being granted since long earlier. The impugned reassessment and consequent demand suddenly with retrospective effect was bad both on merits and procedurally flawed. Even if the power for reassessment be there in the Municipal Corporation it cannot be done arbitrarily with retrospective effect belatedly and in violation of the principle of natural justice provided in Rule 11.

4. In the counter appeals, Learned Senior Counsel for the Municipal Corporation submitted that the appellant company not being in actual possession of the properties as owner, the Learned Single Judge has rightly held that if the legislature intended to grant the benefit to a juristic

person also even if the property was in possession of its employee it would have been mentioned specifically in the legislation. In absence thereof the Company was not entitled to the exemption. If an exemption had been wrongly availed though not entitled in the law, the limitation of time imposed at the stage of scrutiny by the learned Single Judge was not sustainable.

5. We have considered the submissions on behalf of the parties. The appeals can be disposed off on a single question of law and therefore we do not consider it necessary to go into the larger questions urged before us and which are therefore left open for consideration at a later stage, if necessary.

6. Rule 9 provides for calculation of annual letting value. Rule 10 provides for filing of property tax return on self assessment. Section 136 (i) of the Act provides for grant of exemption in payment of property tax with regard to properties in residential occupation by the owner. Section 173 provides for raising of bills for taxes and other demands. Rule 11 provides for scrutiny of a property tax return filed and which will include a self assessed return under Rule 10. Rule 11 reads as follows :

> "Scrutiny of the return.- If on the scrutiny of return received under Rule10, it is found by the Municipal Officer that any information mentioned therein is not correct or is doubtful or he deems it necessary to reassess the annual letting value due to any reasons, then the Municipal Officer may take action for the reassessment of the annual letting value under the provisions of the Act :
>
> Provided that in the reassessment, the variation up to ten percent on either side shall be ignored but where the variation is more than ten per cent, the owner of land or building, as the case may be, shall be liable to

> pay such penalty which will be equal to five times of the amount of difference of self assessment made by such owner and the reassessment made by the Municipality :
>
> Provided further that against the order passed by the Municipal Officer under the first proviso, an appeal may be filed before the Mayor-in-Council in case of a Municipal Corporation and President-in-Council, in case of a Municipal Council or Nagar Panchayat within thirty days from the date of passing the orders, on which the Mayor-in-Council or President-in-Council, as the case may be, after hearing the parties concerned, shall give its decision, which shall be final.
>
> Provided also that the scrutiny of the return deposited under Rule 10, shall be completed within one year from the receipt of return or before the expiry of the next financial year, whichever is earlier. After the expiry of the said period the return shall not be scrutinised."

7. A bare reading of the statutory provisions makes it manifest that a self assessed property return under Rule 10 can be scrutinised and reassessed under Rule 11. But for such scrutiny and reassessment by the Municipal Officer the pre conditions mentioned in Rule 11 must be fulfilled. Before exercising the power, the Municipal Officer is required to be satisfied that some information furnished in the self assessed return was not correct or was doubtful or that it was necessary for any reasons to reassess the annual letting value. In all three conditions it postulates first an exercise carried out by the Municipal Officer leading to his satisfaction for reassessment on basis of materials in his possession. The statutory provision does not vest absolute discretionary power in the Municipal Officer to reassess a return. The words 'any reason' also cannot be interpreted to vest absolute uncanalised powers ignoring the

preceding words with regard to incorrect or doubtful information. The consequences of reassessment can lead to imposition of penalty at high rates punitive in nature and there is a limitation for exercise of the power of reassessment by scrutiny also. There is also a provision of appeal.

8. Therefore unless the assessee is first told by the Municipal Officer of the grounds why he is satisfied to scrutinise and reassess, the assessee cannot satisfy the Municipal Officer that there was no ground to reassess. It is always possible that after the assessee is told the grounds, he may satisfy the Municipal Officer that no ground for scrutiny or reassessment was made out. The consequences of scrutiny and reassessment are serious with high penalty punitive in nature. The order for scrutiny and reassessment is therefore required to be reasoned and discussed. It must record the satisfaction of the Municipal Officer and consideration of the defence by the assessee to arrive at a reasoned conclusion. In absence of this procedure to be followed the remedy of appeal provided would be rendered nugatory and futile. The legislative intent of a show cause notice and passing of a reasoned order after considering the cause shown is therefore manifest and implicit in Rule 11 even if does not specifically use the words show-cause notice.

9. If the statute prescribes a procedure for exercise of powers vested under the statute, it is required to be strictly followed in that manner and all other modes of performance are forbidden. The exercise of statutory power contrary to the procedure provided in the statute vesting the power will be hit by the vice of arbitrariness and shall have to be struck down in judicial review. In *(1969) 1 SCR 589 (Gujarat Electricity Board v. Girdharlal Motilal) it was observed as follows :-*

> “6. It was contended by the learned Attorney-General on behalf of the appellant that in matters like these rigid compliance with the provisions of law should not be

> insisted upon. According to him if the legal requirements are substantially satisfied the validity of the notice given, should be upheld. Proceeding further he urged that so long as the notice given by Electricity Board is sufficient to intimate the licensee the intention of the Board, the mandate of the law is complied with; in a notice under Section 6(1) what is of the essence is the substance of the matter mentioned therein and not the manner in which the notice is worded. He urged that the licensee must have imported some commonsense into the notice received by him and he could not be allowed to riggle out of his obligation by having recourse to technicalities. In advancing these arguments, the learned Attorney-General overlooked the fact that notice required by Section 6(1) is not a notice of an action to be taken or merely a procedural step. It is a mode of exercising the power conferred on the State Electricity Board by the exercise of which the property rights of the licensee can be affected. Section 6(1) confers power on the State Electricity Board to take away the property of the licensee. Such a power must he exercised strictly in accordance with law. The legislature has prescribed the manner of its exercise. It must exercise in that manner and in no other way. It must also be seen that the Parliament deliberately changed the form of the notice to be given from what it was before Act 32 of 1959 was enacted. *It prescribed that the notice must specifically call upon the licensee to sell the undertaking*. The mandate of the law is clear and it must be obeyed. We agree with Mr M.C. Chagla learned counsel for the licensee that the issuing of a notice strictly in accordance with the provisions of Section 6(1) is a condition precedent to the exercise of the power conferred on the State Electricity Board to purchase the undertaking. That being so, we must hold that Section 6(1) is mandatory and it must be strictly complied with."

10. If the statute provides for pre decisional hearing, a post decisional will not meet the requirement of the law. A post decisional hearing cannot be a substitute for a pre decisional hearing as there will be a tendency to uphold the decision by one or another method. A post decisional hearing may be upheld in some exceptional circumstances. The present is not one such case. In (1989) 1 SCC 764 (H.L.Trehan v. Union of India) it was observed as follows :-

> "12....In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and

> there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity….”

11. The impugned demands raised by the Municipal Corporation make it manifest that the procedure prescribed under Rule 11 has not been followed. There is no reference to any show cause notice or consideration of the cause shown why the Municipal Officer was satisfied for reassessment. It is a final order straight away raising the demand after reassessment confronting the assessee with conclusions arrived at ex parte. It purports to give a post decisional hearing after having made scrutiny and done reassessment contrary to law. The reassessments as done are therefore held to be bad and are set aside but without prejudice to the rights of the Municipal Corporation afresh in accordance with law without being prejudiced by any opinion or observation in the order of the Learned Single Judge. The impugned order dated 12.8.2014 is set aside for reasons discussed.

12. Writ Appeal No's. 347/2014, 348/2014, 352/2014, 363/2014, 370/2014, 204/2015, 178/2015 are allowed. Writ Appeal No`s.357/14, 358/14, 365/14, 366/14, 367/14, 368 /14 & 369/14 are disposed leaving the question open for consideration in an appropriate case.

Sd/-	Sd/-
(Navin Sinha)	(Pritinker Diwaker)
Chief Justice	Judge

roshan