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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 47 of 2016

1. NTPC Limited Lara Super Thermal Power Project, Through Its General Manager, Presently Project Office At Chhapora, At Post Chhapora, Pussore, Revenue & Civil District Raigarh (Chhattisgarh).

   [note:- In The Impugned Order, The Appellant No. 1 Has Been Impleaded As :- General Manager, N T P C Limited, Lara Super Thermal Power Project, Office Address Opposite Chhattisgarh Gramin Bank / S B I, Kotra Road, Raigarh, Revenue & Civil District Raigarh (Chhattisgarh).]

2. Deputy General Manager (Vigilance), N T P C Limited, Korba, Revenue & Civil District Korba (Chhattisgarh).

---- Appellants

Versus

1. Shreyansh Jaiswal S/o Shri Keshav Prasad Jaiswal, Aged About 20 Years R/o B- 823 (Earlier B- 846), Kaveri Vihar, N T P C Township, Post Jamnipali, P S Darri, Tahsil Katghora, Revenue & Civil District Korba (Chhattisgarh). (At The Time Of Purchase Of Land, The Respondent No. 1 Was Minor And Was Represented By His Mother Namely Jyoti Jaiswal, But Now The Respondent No. 1 Has Become Major, So The Mother Is Not Arrayed As Party)

2. State Of Chhattisgarh, Through Secretary, Department Of Industries/ Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, Revenue & Civil District Raipur (Chhattisgarh).

3. Collector, Raigarh, Revenue & Civil District Raigarh (Chhattisgarh)

4. Sub Divisional Officer (Revenue)- Cum- Land Acquisition Officer, Raigarh, Tahsil Raigarh, Revenue & Civil District Raigarh (Chhattisgarh)

---- Respondents

Writ Appeal No. 49 of 2016

1. NTPC Limited, Lara Super Thermal Power Project, Through Its General Manager, Presently Project Office At Chapora, At Post Chapora, Pussore, Revenue & Civil District Raigarh Chhattisgarh

   (Note In the Impugned Order The Appellant No. 1 Has Been Impleaded As General Manager, N.T.P.C. Limited, Lara Super Thermal Power Project, Office Address Opposite Chhattisgarh Gramin Bank / S.B.I. Kotra Road, Raigarh, Revenue & Civil District Raigarh Chhattisgarh

2. Deputy General Manager(Vigilance), N.T.P.C. Limited, Korba, Revenue & Civil District Korba Chhattisgarh

---- Appellants

Versus

1. Keshav Prasad Jaiswal S/o Late Shri K.R. Jaiswal, Aged About 58 Years

2. Master Satwik Jaiswal S/o Keshav Prasad, Jaiswal Aged About 14 Years

   Petitioner No. 2 is a Minor and is Represented Through his Natural Gradian (Father) Shri Keshav Prasad Jaiswal

   Both are R/o B 823 (Earlier No. B 846 Kaveri Vihar N.T.P.C. Township, Post Jamnipali, P.S. Darri, Tahsil Katghora, Revenue & Civil District Korba Chhattisgarh

3. State Of Chhattisgarh, Through Secretary, Department Of Industries / Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, Revenue & Civil District Raipur Chhattisgarh

4. Collector, Raigarh, Revenue & Civil District Raigarh Chhattisgarh

5. Sub Divisional Officer (Revenue) Cum Land Acquisition Officer, Raigarh, Tahsil Raigarh Revenue & Civil District Raigarh Chhattisgarh

---- Respondents

<u>Writ Appeal No. 50 of 2016</u>

1. NTPC Limited Lara Super Thermal Power Project, Through Its General Manager, Presently Project Office At Chhapora, At Post Chhapora, Pussore, Revenue & Civil District Raigarh (Chhattisgarh).

   [note:- In The Impugned Order, The Appellant No. 1 Has Been Impleaded As :- General Manager, N T P C Limited, Lara Super Thermal Power Project, Office Address Opposite Chhattisgarh Gramin Bank/ SBI, Kotra Road, Raigarh, Revenue & Civil District Raigarh (Chhattisgarh).]

2. Deputy General Manager (Vigilance), N T P C Limited, Korba, Revenue & Civil District Korba (Chhattisgarh).

---- Appellants

Versus

1. Smt. Sunita Devi W/o Bhaiyalal Kushwaha, Aged About 51 Years R/o N H -3, B-249, N T P C Township Vidhyanchal, Post & P S Vindhnagar, Tahsil Biadhan, Revenue & Civil District Singrouli (Madhya Pradesh)

2. State Of Chhattisgarh, Through Secretary, Department Of Industries/ Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, Revenue & Civil District Raipur (Chhattisgarh).

3. Collector, Raigarh, Revenue & Civil District Raigarh (Chhattisgarh)

4. Sub Divisional Officer (Revenue)- Cum- Land Acquisition Officer, Raigarh, Tahsil Raigarh, Revenue & Civil District Raigarh (Chhattisgarh)

---- Respondents

Writ Appeal No. 51 of 2016

1. NTPC Limited Lara Super Thermal Power Project, Through Its General Manager, Presently Project Office At Chhapora, At Post Chhapora, Pussore, Revenue & Civil District Raigarh (Chhattisgarh).

   [note:- In The Impugned Order, The Appellant No. 1 Has Been Impleaded As :- General Manager, N T P C Limited, Lara Super Thermal Power Project, Office Address Opposite Chhattisgarh Gramin Bank/ SBI, Kotra Road, Raigarh, Revenue & Civil District Raigarh (Chhattisgarh).]

2. Deputy General Manager (Vigilance), (N.T.P.C. Limited, Korba, Revenue & Civil District Korba Chhattisgarh.

---- Appellants

Versus

1. Smt. Shashi Shukla W/o Banshi Gopal Shukla , Aged About 46 Years R/o B. 248 N T P C Township Ujjwal Nagar,, Seepat, Post & P.S. Seepat, Tahsil Masturi, Revenue & Civil District Bilaspur Chhattisgarh

2. State of Chhattisgarh, Through Secretary, Department Of Industries / Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, Revenue & Civil District Raipur Chhattisgarh

3. Collector, Raigarh, Revenue & Civil District Raigarh Chhattisgarh

4. Sub Divisional Officer, (Revenue) Cum Land Acquisition Officer, Raigarh, Tahsil Raigarh Revenue & Civil District Raigarh Chhattisgarh

---- Respondents

Writ Appeal No. 57 of 2016

1. NTPC Limited Lara Super Thermal Power Project, Through Its General Manager, Presently Project Office At Chhapora, At Post Chapora, Pussore, Revenue & Civil District Raigarh Chhattisgarh

   (Note in the Impugned Order The Appellant No. 1 Has Been Impleaded As General Manager, N.T.P.C. Limited, Lara Super Thermal Power Project, Office Address Opposite Chhattisgarh Gramin Bank / S.B.I. Kotra Road, Raigarh, Revenue & Civil District Raigarh Chhattisgarh

2. Deputy General Manager(Vigilance), (N.T.P.C. Limited, Korba, Revenue & Civil District Korba Chhattisgarh

---- Appellants

Versus

1. Dev Saran Arya S/o Kishori Lal Arya, Aged About 62 Years

2. Kuldeep Arya, S/o Dev Saran Arya, Aged About 23 Years

3. Hemant Arya, S/o Dev Saran Arya, Aged About 20 Years

   All are R/o House No. 437, Housing Board Colony, Donde Khurd, Raipur Post

Donde Kala, P.S. Vidhan Sabha Tahsil Raipur, Revenue & Civil District Raipur Chhattisgarh

4. State Of Chhattisgarh, Through Secretary, Department Of Industries / Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, Revenue & Civil District Raipur Chhattisgarh

5. Collector, Raigarh, Revenue & Civil District Raigarh Chhattisgarh

6. Sub Divisional Officer, (Revenue) Cum Land Acquisition Officer, Raigarh, Tahsil Raigarh Revenue & Civil District Raigarh Chhattisgarh

---- Respondents

For Appellant	:	Dr. N.K.Shukla, Senior Advocate with Shri B.D.Guru, Advocate.
For Respondent No. 1	:	Shri Surfaraz Khan, Advocate.
For Respondent/State	:	Shri Prafull N Bharat, Additional Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

04/02/2016

1. This batch of appeals arises from a common order dated 17.12.2015 passed in Writ Petition (C) No. 887 of 2015 and analogous cases. The Learned Single Judge has allowed the writ petitions and set aside the impugned notice dated 25.4.2014 holding that it was not a show cause notice but the communication of a final decision for recovery without any opportunity to show cause having civil consequences against the private Respondents. Liberty has been granted to the Appellants for proceeding afresh in accordance with law.

2. Learned Senior Counsel for the Appellants submitted that the lands were acquired by the State Government for the Appellants in different villages of District Raigarh. The final award was made on 20.7.2012. Consequently, compensation was paid to the private Respondents alongwith a sum of Rs. 5 Lacs in lieu of employment under the Rehabilitation and Resettlement Policy, 2007 (hereinafter called 'the Policy').

3. The Sub Divisional Officer (Revenue), Raigarh, wrote to the Appellant on 10.9.2014 that financial benefits under the Policy had wrongly been obtained by ineligible persons and there had been illegal change of names and documents of partition created to obtain the same. Recovery was therefore required to be made from such persons. The compensation money was paid by the Appellants as also the payment of Rs. 5 Lacs under the Policy through a tripartite agreement between the State Government, Appellants and the land losers.

4. In pursuance of the same, the impugned notice was issued to the private Respondents. It is not a case where the authorities did not have authority in the law to issue the notice or the notice contained no reasons and may have been arbitrary on the face of it. It involved the question of payment of Rs. 5 Lacs each to persons not eligible for the same. The Appellants being a public sector Corporation is the guardian of public funds and has to take steps to protect public money generated at the tax payer's expense. Even if the Court is satisfied that the direction to simultaneously deposit Rs. 5 Lacs renders what was essentially a show cause notice bad, the notice may be suitably modified. The private Respondents instead of filing reply to the show cause notice had rushed to this Court directly. The Learned Single Judge ought to have directed the private Respondents to file their reply rather than to have quashed the notice.

5. Learned Counsel for the private Respondents appearing in all the appeals submitted that the appeals itself were misconceived. The Learned Single Judge was satisfied that the impugned notice dated 25.4.2015 had been passed in violation of principles of natural justice without an opportunity of defence to the private Respondents communicating a final decision taken without hearing them. The filing of reply would serve no purpose at all as the Appellants have already made up its mind. A show cause notice is not an empty formality but requires issuance of notice with an open mind and a fair and reasonable consideration of the cause that may be shown to arrive at a final conclusion. If the impugned

order has been quashed, nothing prevents the State Government which is the appropriate authority and on whose information the impugned notice had been issued, to issue a fresh show cause notice to the private Respondents and proceed in accordance with law. The Appellants have no locus standi on the issue as it disbursed the compensation money and paid under the Policy based on the information provided by the State Government itself. The private Respondents not being employees of the NTPC and the money having been paid to them through the State Government, nothing precludes the State Government from proceeding further if it so desires.

6. Learned Additional Advocate General from the impugned notice dated 25.4.2015 submitted that if the State authorities on an enquiry came to the conclusion that money had been paid wrongly under the Policy, then merely because the State may have recommended with regard to the same at an earlier point of time, does not preclude the State from re-examining matters and correct the errors if any. It was emphasised that the issue involves public money. The private Respondents ought not to have rushed directly to the Court but should have filed their replies when proper enquiry could have been done and a final conclusion arrived at. Merely because the impugned notice required them to deposit Rs. 5 Lacs cannot be conclusive as the notice itself states that failing which appropriate steps for recovery would be taken in accordance with law.

7. We have considered the submissions on behalf of the parties.

8. In exercise of jurisdiction under Article 226 of the Constitution, judicial review empowers this Court to interfere where there may be errors in the decision making process. At this stage, the Court is not concerned with the correctness or incorrectness of the contents of the impugned notice. The impugned notice in no uncertain terms states that in pursuance of an enquiry, the Revenue Department had arrived at a finding that illegal disbursement had been made. The Corporation had been directed to take steps for recovery. A

prima facie assessment had been made by the Corporation through its Vigilance Department. It then requires the private Respondents to deposit Rs. 5 Lacs each failing which legal proceedings would be taken for recovery against the concerned.

9. There can be no two opinions that the impugned order is not a show cause notice but the communication of a decision already taken. It is also not in dispute that prior to the same no other notice had been issued to the private Respondents. The unsustainability of the impugned notice need not detain us any further in view of the law laid down in (2010) 13 SCC 427 (Oryx Fisheries Private Limited v. Union of India) observing as follows:

> "24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.
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> 27. It is also doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.
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> 35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself."

10. The writ petitions therefore were maintainable as it cannot be said *stricto senso* that the impugned order was a show cause notice. Having said so, we concur with the Learned Single Judge that the notice in the present form was erroneous. But, the Court cannot be oblivious to the contents of the notice. It involves public money which both the Appellants and the State Government are bound to protect. The payments were made from the tax payer's money. If any

doubts have arisen with regard to ineligible persons having received benefit of the same, nothing prevents the authorities concerned from taking steps to rectify the errors and mere payment cannot be considered an act in finality precluding and divesting the authorities concerned from enquiring into any irregularities or illegalities. The question of fraud may also arise or may not arise in which event the power of the authorities concerned cannot be curtailed in any manner. We hasten to add that this cannot be construed as any opinion, observation or indication by us that any of the private Respondents have either committed fraud or have obtained monetary compensation under the Policy not being eligible for the same. All we say is that nothing precludes the authorities concerned from holding an enquiry into the matter. The rest is the subject matter of enquiry and further action, if required, will have to abide by the same.

11. The extraordinary powers under Article 226 are not fettered by any bounds except self imposed restrictions. For justifiable reasons and in exercise of discretionary jurisdiction, for reasons discussed, the Court can pass appropriate orders in the facts of a particular case by moulding the relief appropriately keeping in mind the interest of both sides. The present is one such case.

12. The land acquisition proceedings were conducted by the State Government. Compensation money has been paid by NTPC in accordance with the land records available and recommended by the State authorities. The impugned order itself starts on the premise of the information received from the Revenue authorities based on the enquiry conducted by them.

13. We therefore modify the order of the Learned Single Judge and direct that the private Respondents shall individually file their response before the Sub Divisional Officer (Revenue), Raigarh to the impugned notice within a period of five weeks from today instead of before the Appellants.

14. On the date that an individual Respondent files his reply, the Sub Divisional Officer (Revenue), shall immediately inform him of the next date of hearing. On that date, the original records shall be kept ready by the Sub Divisional Officer (Revenue) for inspection by the concerned private Respondents. An authorised competent officer of the Appellants shall also remain present on that date alongwith original records. If a private Respondent requests for a personal or representative hearing, it shall be provided alongwith inspection of the original records, if desired. In the event that a private Respondent makes a request for adjournment after examining the records, the Sub Divisional Officer (Revenue) may grant reasonable time of three weeks and not more. In this manner, let the Sub Divisional Officer (Revenue) pass final appropriate orders in accordance with law within a maximum period of three months from the date of first hearing by him in the manner prescribed above.

15. The appeals are disposed.

Sd/-	Sd/-
(Navin Sinha)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Amit