

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.271 OF 2022

Corvus Urban Infrastructure LLP,
Through Mr. Sumermal Jain.
Flat no.27. 4th Floor Kranti Sadan 81/89,
Shankar Pupala Road, Kamathipura,
Mumbai Central, Mumbai,
Maharashtra – 400008

... Petitioner

Versus

1. The State of Goa
through its Chief Secretary
Alto Porvorim – Goa.

2. The Deputy Town Planner,
The Town And Country Planning Department,
Tiswadi Taluka Office,
5th Floor Kamat Towers
Patto Plaza – Panaji-Goa.

3. The Chief Town Planner &
Member Secretary,
The Conservative Committee,
The Town And Country Planning
Department, Patto Panaji Goa.

4. The Chief Electrical Engineer
Electricity Department, Government of Goa
Panaji Goa.

5. The Assistant Engineer
Electricity Sub-Division-I (O & M)
Corlim-Goa

... Respondents

Mr. Dattaprasad D. Lawande, Mr. Pradosh Dangui *and*
Ms. Akshaya Joglekar, Advocates *for the Petitioner.*

Mr. Devidas J. Pangam, Advocate Genera *with* Ms. Maria
S. J. Correia, Additional Government Advocate *for the*
Respondents.

CORAM: M. S. SONAK &
BHARAT P.
DESHPANDE, JJ.

Reserved on: 7th September 2022

Pronounced
on: 8th September 2022

JUDGMENT(*Per: Bharat P. Deshpande,J*)

Rule. Rule made returnable forthwith at the request and
with the consent of the learned counsel for the parties.

2. The petitioner is challenging the order of revocation of
Technical Clearance dated 30/11/2021(Exhibit 'D') passed by
Deputy Town Planner/respondent no.2 herein on the premise
that no show-cause notice or any hearing was afforded to him
before passing such order.

3. The petitioner is also challenging the consequential orders
passed by the Secretary/Sarpanch of Village Panchayat SE-Old
Goa dated 02.12.2021(Exhibit 'E'), order dated 10.02.2022

passed by Village Panchayat SE-Old Goa under Section 66(4) of Goa Panchayat Raj Act, 1994 (Exhibit 'F'), letter dated 07.01.2022 issued by Assistant Engineer, Sub-Division-I (O & M), Corlim, intimating for disconnection of installation of electricity connection to the structure (Exhibit 'G'), which are the fallouts of order dated 30/11/2021 passed by respondent no.2.

4. The petitioner therefore prays as under:

a. That this Hon'ble Court be pleased to call for the records of order dated 30/11/2021 bearing reference no. T15/8482/ELLA/ TCP/2016-2021/2046 issued by Deputy Town Planner, office of Town and Country Planning Department, Government of Goa after examining the validity, legality, correctness and propriety of the same be pleased to quash and set aside the same;

b. That this Hon'ble Court be pleased to call for the records of order dated 02/12/2021 bearing reference no. T15/8482/ELLA/TCP/2021/205B issued by Deputy Town Planner Town and country Planning Department and after examining the validity, legality, correctness and propriety of the same be pleased to quash and set aside the same;

c. That this Hon'ble Court be pleased to call for the records of the letter dated 07/01/2022 bearing no.AE/SD.I/O&M/COR/21-22tECH-62(B)/2201 issued by Asst. Engineer Sub-Div-I (O&M), Corlim Electricity Department and after examining the validity, legality, correctness and propriety of the same be pleased to quash and set aside the same and restore the Electricity connection of the Petitioner;

d. Pending hearing and final disposal of the present Petition this Hon'ble Court be please to stay the effect and operation of the order dated 30/11/2021 bearing reference no. T15/8482/ELLA/TCP/2016-2021/2046 issued by Deputy Town Planner, office of Town and Country Planning Department, Government of Goa and stay order dated 02/12/2021 bearing reference no. TIS/8482/ELLA/TCP/2021/205B issued by Deputy Town Planner Town and country Planning Department;

e. Pending hearing and final disposal of the present Petition this Hon'ble Court be please to stay the letter dated 07/01/2022 bearing no. AE/SD.I/O&M/COR/21-22Tech-62(B)/2201 issued by Asst. Engineer Sub-Div- I (O&M), Corlim Electricity Department and further be please to direct the Respondent no. 4 & 5 to restore the electricity connection to the Petitioner house;

f. Ex-parte ad-interim relief in terms of prayer clause (d) &(e);

g. For such other and further Reliefs that this Hon' ble Court deems fit and proper in the facts and circumstances of the instant Case.'

5. Accordingly, the matter was taken up for final disposal at the admission stage itself.

6. Heard Mr. Dattaprasad D. Lawande, learned counsel for the petitioner and Mr. Devidas J. Pangam, learned Advocate General alongwith Ms. Maria Correia, learned Additional

Government Advocate for the respondents no.1 to 5.

7. Learned Counsel Shri Lawande appearing for the petitioner strenuously urged that there is violation of principles of natural justice in passing the impugned orders as the petitioner was not given any opportunity or even a show-cause notice to appear and explain and, therefore, such action on the part of the officers of the State is arbitrary and illegal.

8. Shri Lawande, then pointed out that from the face of it, the impugned order dated 30/11/2021 is perverse. In this respect he points out the observations of respondent no.2 with regard to the demarcation of the plinth area shown in both the plans. He pointed out that the plinth area in both the plans submitted before the concerned authorities is the same, i.e. 26.46mts x 15.00mts. In this respect invited attention of this Court to the plans at page no.33 and page no.38. According to learned counsel, such observations are perverse as the same are not borne out of the record.

9. Learned counsel Shri Lawande then submitted that permissions from the concerned departments/authorities were obtained in the name of erstwhile owner which is not at all illegal

as the documents/records show the name of the earlier owner. The petitioner purchased the property and accordingly repairs of the old structure has been carried out to the extent of 95%. He, therefore, submitted that actions on the part of respondents are clearly violative of principles of natural justice, arbitrary and illegal. He places reliance on the decisions in the case of *S.L. Kapoor v/s. Jagmohan And Others*¹; *Mohinder Singh Gill and Another v/s. The Chief Election Commissioner, New Delhi And Others*²; *Punjab National Bank And Others v/s. Manjeet Singh And Another*³.

10. Learned Advocate General appearing for the State alongwith Ms. Maria Correia, learned Additional Government Advocate fairly submitted that the revocation order is passed without issuing any show-cause notice or without affording any opportunity to the petitioner. However, he submits that issuing show-cause notice and giving an opportunity to the petitioner was only an empty formality as the record speaks for itself and, therefore, such order is not violative of principles of natural justice. Invited attention of this Court to the reply-affidavit filed on behalf of respondent no.2 claiming therein that on the basis of

¹ (1980) 4 SCC 379

² (1978) 1 SCC 405

³ (2006) 8 SCC 647

complaints received, detailed inquiry was conducted and on the basis of documents available with the concerned authorities, it was observed that the petitioner under the garb of repairs of alleged old structure, constructed new structure/house. Even there is variation in the plinth area. Respondent no.2 found on the basis of documents that the petitioner has contravened the condition no.28 of the Technical Clearance order, there is variation with the plinth area as mentioned in the approved plan and suppression of material facts together with misrepresentation of the ownership at the time of procuring Technical Clearance. Since all these documents were available and on the basis of admitted circumstances, ex-facie reveal that there was contravention of the provisions of the Technical Clearance order and other regulations and, therefore, the impugned order was passed.

11. The question which falls for our consideration is whether the order of revocation dated 30/11/2021 is violative of principles of natural justice and thereby affecting fundamental right of the petitioner to be heard before passing any adverse order.

12. Reply-affidavit filed on behalf of respondent no.2 and the arguments advanced on behalf of respondent by the learned

Advocate General clearly reveal that before passing of the impugned order dated 30/11/2021 by respondent no.2, there was no show-cause notice issued to the petitioner. No opportunity was given to the petitioner to put up his case before the concerned authority with regard to the alleged complaint filed against such repairs/re-construction.

13. The petitioner purchased said property vide Sale Deed dated 20.09.2021 from the erstwhile owner. The said property bearing Survey No.4/1 of Village Ella (Old Goa), Tiswadi, Goa was admeasuring around 2400sq.mts. By virtue of such Sale Deed, the petitioner became co-owner of the said property. It is the contention of the petitioner that in the said property, there was a structure admeasuring 397sq.mts. existing prior to 1932(herein referred as 'said structure'). The said structure was shown in the old cadastral survey plans as well as in survey records in Form I & XIV of survey no.4/1 admeasuring an area of 397sq.mts. Said structure was repaired and re-constructed somewhere in the year 1987 after obtaining NOC from the Village Panchayat.

14. It is further the case of the petitioner that NOC/approval dated 28.12.2015 was obtained from the Goa Coastal Zone

Management Authority. Similarly, approval dated 07.10.2016 was obtained from the Member Secretary, Conservation Committee. Technical Clearance dated 18.10.2016 was issued by Town & Country Planning Departments, provisional NOC dated 27.10.2016 was obtained from the Directorate of Health Services, Construction Licence dated 14.11.2016 and renewal of construction licence dated 04.10.2019 was obtained from the Village Panchayat SE-Old Goa. Permissions for repairs dated 03.02.2020 was also obtained from the Director (Monuments-II), Archaeological Survey of India. Said property is notified as protected area as per the Ancient Monuments And Archaeological Sites And Remains Act, 1958.

15. The petitioner further stated that the said property was purchased by the petitioner vide Sale Deed dated 20.09.2021 from Mrs. Survarna Suraj Lotlikar. Said Survarna Suraj Lotlikar purchased the said property from Mr. Jose Maria de Gouveia de Pinto. The petitioner's predecessor in title obtained several permissions from the concerned authorities for repairs and renovations as in the survey records the name of Mr. Pinto is still appearing. Therefore, permissions were applied for in the name of Mr. Pinto. The petitioner has given details of the permissions obtained in the name of Mr. Pinto in paragraph 5 of the petition

from (a) to (g) which are annexed as Exhibit “A Colly” to the petition.

16. The petitioner further submitted that in view of the permissions granted by the concerned authorities, the petitioner predecessor-in-title Mrs. Suvarna Suresh Lotlikar started the work and repairs and renovations of the existing structure, in accordance with the plans approved and NOCs granted.

17. Mrs. Suvarna Suraj Lotlikar approached this Court by challenging some actions on the part of respondents in Writ Petition No.LD-VC-CW-132-2020(***Mrs. Suvarna Suresh Lotlikar v/s. Union of India & Ors***). Vide judgment dated 22.09.2020, this Court allowed the said petition in terms of prayers clause (a) and (b). Said judgment is annexed to the petition as Exhibit 'B'. The prayer clauses (a) and (b) which were allowed by this Court read as under:

“(a) That this Hon'ble Court be pleased to direct the Respondent No.4 & 5 to allow the Petitioner to carry out the repairs and renovation of the structure which is reflected in cadastral survey plan (annexed at page 64) promulgated in the year 1932 bearing survey no.35(part); also reflecting in survey plan of property bearing survey no.4/1 of Ella Village Old Goa; structure H reflected in for I and XIV Form; and as per the approved plan by

the Member Secretary Conservation Committee and Town and Country Planning Department, and plan submitted at page 75; and in terms of Permission dated 03.02.2020 granted by the Director (Monuments-II), the Archaeological Survey of India (Respondent No.3);

(b) To quash and set aside the letter dated 3rd March, 2020, 12th March, 2020, 16th March 2020, 23rd March, 2020 and 02nd June, 2020 issued by the Respondents No.4 and 5 by which the permission granted by the Respondent No.3 has been restricted only to the extent of repairs of the “hut”;

18. The petitioner further submitted that in pursuance of the judgment passed by this Court, repairs and renovations of the existing structure were carried out in terms of approved plan dated 18.10.2016 and 03.02.2020. In spite of the orders passed by this Court in above writ petition, the ASI authorities were issuing show-cause notices to Mrs. Lotlikar which resulted in approaching this Court by filing Writ Petition No.1160/2021(***Mrs. Suvarna Suraj Lotlikar v/s. Union of India & Ors***). Similarly, another petition was filed by ***Save Old Goa Action Committee v/s. Union of India & Ors***. bearing Writ Petition No.1153/2021 wherein challenge was raised to the permissions/NOC granted by all the authorities in spite of the said structure. Both above petitions were heard by this Court and by common order dated 03.05.2021, Writ Petition

No.1153/2021 filed by Save Old Goa Action Committee was rejected whereas, Writ Petition No.1160/2021 filed by Mrs. Suvarna Suresh Lotlikar was allowed in terms of prayer clause (a). The petitioner has produced a copy of the judgment passed by this Court in the above two petitions at Exhibit 'C' which start from page 71 onwards.

19. With these documents, it is the contention of petitioner that in spite of order passed by this Court in above Writ Petitions, respondent no.2, without giving any opportunity, suddenly revoked the permission/Technical Clearance order No.TIS/8482/Ella/TCP/16/404 dated 18.10.2016 and consequently directed the petitioner to immediately stop the construction activity in the property. Consequently, the Deputy Town Planner vide its order dated 02.12.2021 directed the Village Panchayat to initiate action against the construction in view of revocation of Technical Clearance. Similarly, the Assistant Engineer, Sub-Division-I(O&M) Corlim intimated about disconnection of installation of electricity connection to the said house. Finally, the Village Panchayat vide its order dated 10.02.2022 issued under Section 66(4) of Goa Panchayat Raj Act, 1994 revoked the permission granted for construction and also resolved to issue demolition order.

20. In *Mohinder Singh Gill* (supra), the Hon'ble Apex Court while discussing with the facet of natural justice an area of application of it, observed in paragraphs 43 to 56 as under:

'43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has, many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam – and of Kautilya's Arthashastra – the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these depths for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.'

'44. The dichotomy between administrative and quasi-judicial functions vis-a-vis the doctrine of natural justice is presumably obsolescent after Kraipak [A.K. Kripak v. Union of India, (1969) 2 SCC 262 : (1970) 1 SCR 457] in India and Schmidt [Schmidt v. Secretary of State for Home Affairs, (1969) 2 Ch 149] in England.'

'45. Kraipak marks the watershed, if we may say so, in the application of natural justice to administrative proceedings. Hegde, J., speaking for a Bench of five Judges observed, quoting for support Lord Parker in In re H.K. (an infant) (1967) 2 QB 617, 630: (1967) 1 All ER 226] :

“It is not necessary to examine these decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding.

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The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.

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*The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative inquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in **Suresh Koshy George v. University of Kerala** the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural*

justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.”’

'46. It is an interesting sidelight that in America it has been held to be but fundamental fairness that the right to an administrative hearing is given. Natural justice is being given access to the United Nations. It is notable that Mathew, J. observed in Indira Gandhi (p. 513, SCC p. 128, para 303):

“If the amending body really exercised judicial power, that power was exercised in violation of the principles of natural justice of audi alteram partem. Even if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance.”

Lord Morris of Borth-y-Gest in his address before the Bentham club concluded:

“We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying those principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a ‘majestic’ conception? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarised as

being fairplay in action – who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled if it lacks more exalted inspiration.”'

'47. It is fair to hold that subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play.'

'48. Once we understand the soul of the rule as fairplay in action – and it is so – we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more – but nothing less. The “exceptions” to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.'

'49. Let us look at the jurisprudential aspects of natural justice, limited to the needs of the present case, as the doctrine has developed in the Indo-Anglican systems We

may state that the question of nullity does not arise here because we are on the construction of a constitutional clause. Even otherwise, the rule of natural justice bears upon construction where a statute is silent save in that category where a legislation is charged with the vice of unreasonableness and consequential voidness.'

'50. Article 324, on the face of it, vests vast functions which may be powers or duties, essentially administrative and marginally even judicative or legislative. (See All Party Hill Leaders' Conference, Shillong v. Capt. W.A. Sangma [(1977) 4 SCC 161] .) We are not fascinated by the logomachic exercise suggested by Sri P.P. Rao, reading "functions" in contradistinction to "powers" nor by the trichotomy of diversion of powers, fundamentally sound but flawsome in several situations if rigidly applied. These submissions merely serve to draw the red-herring across the trial. We will now zero in on the crucial issue of natural justice vis-a-vis Article 324 where the function is so exercised that a candidate is substantially prejudiced even if he has not acquired a legal right nor suffered "civil consequences", whatever that may mean.'

'51. We proceed on the assumption that even if the cancellation of the poll in this case were an administrative act, that per se does not repel the application of the natural justice principle. Kraipak nails the contrary argument. Nor did the learned Addl. Solicitor-General contend that way, taking his stand all through, not on technicalities, easy victories or pleas for reconsiderations of the good and progressive rules gained through this Court's rulings in administrative law but on the foundational thesis that any construction that we may adopt must promote and be geared to the great goal of expeditious, unobstructed, despatch of free and fair elections and leaving grievances to

be fully sorted out and solved later before the Election Tribunal set out by the Act. To use a telling word familiar in officialese: "Election Immediate".'

'52. So now we are face to face with the naked issue of natural justice and its pro tem exclusion on grounds of necessity and non-stultification of the on-going election. The Commission claims that a direction for re-poll is an "emergency" exception. The rules of natural justice are rooted in all legal systems, not any "new theology" and are manifested in the twin principles of nemo judex in causa sua and audi alteram partem. We are not concerned here with the former since no case of bias has been urged. The grievance ventilated is that of being condemned unheard. Sporadic applications or catalogue of instances cannot make for a scientific statement of the law and so we have to weave consistent criteria of application and principles for carving out exceptions. If the rule is sound and not negated by statute, we should not devalue it nor hesitate to hold every functionary who affects others' right to it. The audi alteram partem rule has a few facets two of which are (a) notice of the case to be met; and (b) opportunity to explain. Let us study how far the situation on hand can coexist with canons of natural justice. While natural justice is universally respected, the standards vary with situations contracting into a brief, even post-decisional opportunity, or expanding into trial-type trappings.'

'53. Ridge v. Baldwin is a leading case which restored light to an area "benighted by the narrow conceptualism of the previous decade", to borrow Professor Clark's expression. [Natural Justice : Substance and Shadow 'Public Law' Journal – Spring 1975] Good administration demands fairplay in action and this simple desideratum is the fount of natural justice. We have already said that the

classification of functions as “judicial” or “administrative” is a stultifying shibboleth, discarded in India as in England. Today, in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity belights penumbral areas it is only for improving the quality of government by injecting fairplay into its wheels.'

'54. The learned Addl. Solicitor-General welcomed the dramatic pace of enlargement in the application of natural justice. But he argued for inhibiting its spread into forbidden spaces lest the basic values of Article 329 be nullified. In short, his point is that where utmost promptitude is needed – and that is the raison d'etre of exclusion of intermediate legal proceedings in election matters – natural justice may be impractical and may paralyze, thus balking the object of expeditious completion. He drew further inspiration from another factor to validate the exclusion of natural justice from the Commission's actions, except where specifically stipulated by statute. He pointed out what we have earlier mentioned – that an election litigation is one in which the whole constituency of several lakhs of people is involved and, if the Election Commission were under an obligation to hear affected parties it may, logically, have to give notice to lakhs of people and not merely to candidates. This will make an ass of the law and, therefore, that is not the law. This reductio ad absurdum also has to be examined.'

'55. Law cannot be divorced from life and so it is that the life of the law is not logic but experience. If, by the experiential test, importing the right to be heard will paralyze the process, law will exclude it. It has been said that no army can be commanded by a debating society, but it is also true that the House of Commons did debate, during the days of debacle and disaster, agony and crisis of

the Second World War, the life-and-death aspects of the supreme command by the then British Prime Minister “to the distress of all our friends and to the delight of all our foes” – too historic to be lost on jurisprudence. Law lives not in a world of abstractions but in a cosmos of concreteness and to give up something good must be limited to extreme cases. If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity. Such is the sensible perspective we should adopt if ad hoc or haphazard solutions should be eschewed.'

'56. Normally, natural justice involves the irritating inconvenience for men in authority, of having to hear both sides since notice and opportunity are its very marrow. And this principle is so integral to good government, the onus is on him who urges exclusion to make out why. Lord Denning expressed the paramount policy consideration behind this rule of public law (while dealing with the nemo judex aspect) with expressiveness: “Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking “the Judge was biased’.” We may adapt it to the audi alteram situation by the altered statement: “Justice must be felt to be just by the community if democratic legality is to animate the rule of law. And if the invisible audience sees a man's case disposed of unheard, a chorus of ‘no-confidence’ will be heard to say, ‘that man had no chance to defend his stance’.” That is why Tucker, LJ in Russel v. Duke of Norfolk [(1949) 1 All ER 109, 118 : 65 ILR 225] emphasised that “whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case”. What is reasonable in given circumstances is in the domain of practicability; not formalised rigidity. Lord Upjohn in Fernando [Durayappah v. Fernando, (1967) 2 AC 337 : (1967) 2 All ER 152 (PC)]

observed that “while great urgency may rightly limit such opportunity timerously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable”. It is untenable heresy, in our view, to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from a benignant, albeit inconvenient obligation. The procedural pre-condition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness. The Election Commission is an institution of central importance and enjoy far-reaching powers and the greater the power to affect others right' or liabilities the more necessary the need to hear.'

21. In the case of ***S. L. Kapoor*** (supra) the Hon'ble Apex Court discussed the aspect of natural justice and also *audi alterem partem* in detail. It was basically held that the old distinction between judicial act and administrative act has withered away and now even an administrative order, if involves civil consequences, must comply with the rules of natural justice. In its comprehensive connotations, everything that affects a citizen in his civil life inflicts a civil consequence. It has been observed in paragraphs no.17, 18, 19, 20 and 24 as under:

'17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the

observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non observance of natural justice but because Courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.'

'18. In Ridge v. Baldwin [1964 AC 40, 68 : (1963) 2 All ER 66, 73] one of the arguments was that even if the appellant had been heard by the watch committee nothing that he could have said could have made any difference. The House of Lords observed:

"It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But, even if it could, the watch committee would, in my view, fail on the facts. It may well be that no reasonable body of men could have reinstated the appellant. But as between the other two courses open to the watch committee the case is not so clear. Certainly, on the facts, as we know them, the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more

lenient course.”

'19. Megarry, J., discussed the question in John v. Rees. He said :

“It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. ‘When something is obvious’, they may say, ‘why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start’. Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.”

'20. In Annamunthodo v. Oilfields Workers' Trade Union Lord Denning, in his speech said: “Counsel for the respondent Union did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the courts. It is a prejudice to any man-to be denied justice.”

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'24. The matter has also been treated as an application of the general principle that justice should not only be done but

should be seen to be done. Jackson's Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

“The distinction between justice being done and being seen to be done has been emphasised in many cases. . . .

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery, C.J.'s judgment in R. v. Home Secretary [(1977) 1 WLR 766, 772] , ex p. Hosenball, where after saying that “the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done” he went on to describe the maxim as “one of the rules generally accepted in the bundle of the rules making up natural justice”.

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland [(1971) 2 Lloyd's Rep 515] Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had

had justice or “to use the time hallowed phrase” that justice should not only be done but be seen to be done. In R. v. Thames Magistrates’ Court, ex. p. Polemis [(1974) 1 WLR 1371] , the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: ‘Well, even if the case had been properly conducted, the result would have been the same. That is mixing up doing justice with seeing that justice is done (per Lord Widgery, C.J. at p. 1375).’

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.’

22. The action of respondent no.2 by revoking earlier orders

without giving any opportunity to the petitioner to be heard is therefore clearly violative of principles of natural justice and, therefore, such action needs to be interfered as observed by the Apex Court in the above decisions and more specifically the portions quoted above.

23. Secondly, the contention of the learned counsel Shri Lawande appearing for the petitioner that the impugned order dated 30/11/2021 is perverse on the face of it as far as grounds for revocation mentioned at page no.2 paragraph 1, needs to be accepted. On perusal of both the plans produced at page no.33 and 38 of the petition and comparing with the measurements found recorded therein, it is clear that there is no variation found in such measurements. Therefore, it is surprising from where the respondent no.2 imported such measurements in its order claiming therein that there is variation in such measurements of both the plans. Prima facie, we observed that there are no variations in the measurements disclosed in both the plans produced in this Court. Reply filed by respondent no.2 do not dispute about the plans produced on record. Therefore, we found that observations of the respondent no.2 with regard to the so called measurements and more specifically variations in it, are clearly perverse.

24. Learned counsel Shri Lawande then pointed out that all permissions were obtained in the name of erstwhile owners as the name in the survey record appears as it is. This aspect is recorded by respondent no.2 in the impugned order as one of the grounds for revoking Technical Clearance order. We consider that such revocation on this ground could have been avoided in case an opportunity would have been given to the petitioner to explain.

25. The orders passed by this Court in the earlier two petitions as annexed in the present petition clearly goes to show that the actions on the part of respondents were quashed and set aside and Mrs. Suvarna Suraj Lotlikar was allowed to carry out repairs/renovation of the of the structure.

26. We are not in agreement with the submissions advanced by the learned Advocate General with regard to the aspect that even if an opportunity was given to the petitioner, the result would have been the same. Non-observance of the principles of natural justice is itself prejudice to any man and proof of prejudice independently of the proof of denial of principles of natural justice is unnecessary.

27. Minimum expectation from such authorities before taking any coercive action is to give an opportunity to the party

concerned to put up his defence. Action on the part of respondent no.2 cannot by any stretch of imagination be construed as administrative function. Even if it is considered that such action is administrative function, it carries civil consequences which affect the civil rights of a particular party and, therefore, principles of natural justice demand that the party should be heard before passing any order in such matter.

28. Accordingly, we clearly observe that the impugned order dated 30/11/2021 (Exhibit 'D') is passed without following principles of natural justice and thereby affecting civil rights of the petitioner and consequently needs to be quashed and set aside. Consequences follow that the subsequent orders/correspondence dated 01.12.2021 at Exhibit 'E' and order dated 07.01.2022 at Exhibit 'G' are also required to be quashed and set aside.

29. Rule is, accordingly, made absolute in terms of prayer clauses (a), (b) and (c).

30. There shall be no order as to costs.

BHARAT P. DESHPANDE, J

M. S. SONAK, J