



W.P.Nos.24132 of 2010, 7500 of 2014 & 4455 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.24132 of 2010, 7500 of 2014 & 4455 of 2021
and
M.P.Nos.1, 2 of 2010, 1 of 2011, 1 to 4 of 2014, 1 of 2015,
& W.M.P.Nos.5080, 5082 & 5085 of 2021

W.P.No.24132 of 2010:

Tridem Port and Power Company Private Limited,
Represented by its Director,
5th Floor, Arjay Apex Centre,
24 College Road,
Chennai – 600 006.

...Petitioner

Vs.

1.State of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Secretariat,
Chennai – 600 009.

2.The Principal Secretary to the Government,
Energy Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.



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3. Tamil Nadu Maritime Board,
Represented by its Vice Chairman &
Chief Executive Officer,
Vairam Complex, 2nd Floor,
22, Sir Theagaraya Road,
T. Nagar,
Chennai – 600 017.

4. Karappidagai North Panchayat,
Rep. by its President,
Karappidagai North Sethi,
Kil Velur Taluk,
Nagapattinam District.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent herein, pertaining to the G.O.Ms.No.19, Revenue dated 13.01.2010, and quash the same, and consequentially direct the 1st respondent to enable the petitioner to set up the Power Project on the land allotted vide G.O.Ms.No.29 Revenue (LD – 6(1)) dated 21.01.2008.

W.P.No.7500 of 2014:

Tridem Port and Power Company Private Limited,
Represented by its Director,
MMPDA Towers, 2nd Floor
No.184, Royapettah High Road,
Chennai – 600 014.

...Petitioner

Vs.



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1.State of Tamil Nadu,
Through its Secretary,
Revenue Department,
Secretariat,
Chennai – 600 009.

2.The Principal Secretary to the Government,
Energy Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

3.The Tamil Nadu Maritime Board,
Represented by its Member Secretary
No.171, South Kesavaperumalpuram,
Greenways Road,
Chennai – 600 028.

4.State of Tamil Nadu
Through its Secretary,
Highways and Minor Ports Department,
Secretariat, Chennai – 600 009.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 3rd respondent, pertaining to the order bearing No.5500/S1/2007 dated 04.03.2014 and quash the same.

W.P.No.4455 of 2021:

Success Power and Infraprojects Private Limited,
represented by its Director,
6th Floor, Lunkad Towers,
Viman Nagar, Pune – 411 014.

...Petitioner



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Vs.

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1. Additional Chief Secretary to the Government,
Revenue and Disaster Management Department,
Secretariat, Fort St. George, Chennai – 600 009.
2. The Director of Land Reforms,
Chepauk,
Chennai – 600 005.
3. The Commissioner of Land Reforms,
Chepauk,
Chennai – 600 005.
4. The Sub Collector,
Nagapattinam,
Tamil Nadu.
5. District Revenue Officer,
Nagapattinam District,
Tamil Nadu.
6. Revenue Divisional Officer,
Nagapattinam District,
Tamil Nadu.
7. The Tahsildar,
Kilvelur Taluk,
Nagapattinam District,
Tamil Nadu.
8. Marshal Microwave Infrastructure Development
Company Private Limited,
6th Floor, Lunkad Towers,
Viman Nagar,
Pune – 411 014.



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9.Nagapattinam Energy Private Limited,
2nd Floor, MMPDA Towers,
184, Royapettah High Road, Royapettah,
Chennai – 600 014.

10.Tridem Port and Power Company Private Limited,
2nd Floor, MMPDA Towers,
184, Royapettah High Road, Royapettah,
Chennai – 600 014.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in G.O.Ms.No.539 dated 29.09.2020 passed by the 1st respondent and consequential impugned letter issued by the 2nd respondent in Ref.No.E3/1088/2008 [L.Ref] dated 29.12.2020 and quash the same and consequently direct the 1st respondent to the grant approval to the petitioner under Section 37-A of the Land Reforms Act.

For Petitioners : Mr.Srinath Sridevan
Senior Counsel
For Mr.T.K.Bhaskar
(in 3WPs)

For R1 & R2 : Mr.S.Silambanan
Additional Advocate General
Assisted by Mr.G.Krishna Raja
Additional Government Pleader
(in W.P.No.24132 of 2010)



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For R1, R2 & R4	: Mr.S.Silambanan Additional Advocate General Assisted by Mr.G.Krishna Raja Additional Government Pleader (in W.P.No.7500 of 2014)
For R1 to R7	: Mr.S.Silambanan Additional Advocate General Assisted by Mr.G.Krishna Raja Additional Government Pleader (in W.P.No.4455 of 2021)
For R3	: Mr.D.Ravichander (in W.P.Nos.24132 of 2010 & 7500 of 2014)
For R4	: No Appearance (in W.P.No.24132 of 2010)

COMMON ORDER

The writs on hand have been instituted by the Tridem Port and Power Company Private Limited.

2. The first writ petition in W.P.No.24132 of 2010 has been filed questioning the validity of the Government order issued in G.O.Ms.No.19, Revenue dated 13.01.2010 cancelling the order of allotment of land granted in favour of the writ petitioner in G.O.Ms.No.29, Revenue (LD – 6(1))



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dated 21.01.2008.

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3. The second writ petition in W.P.No.7500 of 2014 has been filed to quash the order dated 04.03.2014 issued by the 3rd respondent i.e., The Tamil Nadu Maritime Board cancelling all the Approvals / Permissions granted to the petitioner for developing Thirukkuvalai Port and relevant land lease agreement entered into with the petitioner.

4. The third writ petition in W.P.No.4455 of 2021 has been filed by Success Power and Infraprojects Private Limited challenging the Government order in G.O.Ms.No.539, Revenue and Disaster Management Department dated 29.09.2020 and consequential order passed by the Director of Land Reforms in proceedings dated 29.12.2020.

FACTS OF THE CASE:

5. The Government of Tamil Nadu allotted lands totally to 1838 acres for construction of port and power project in favour of the Tridem Port and Power Company Private Limited in G.O.Ms.No.527 dated 14.09.2007. Further allotment of lands were made vide G.O.Ms.No.29, Revenue (LD –



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6(1)) dated 21.01.2008 and G.O.Ms.No.30, Highways (HN2) Department dated 24.01.2008. Some of the allotted lands could not be used for the purpose of the project and therefore, the Tridem Port and Power Company Private Limited had purchased the lands privately. The total lands held by the Company were in excess of the land ceiling limits, therefore the petitioner submitted an application on 05.05.2011 under Section 37-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 seeking exemption.

6. The Tridem Port and Power Company Private Limited desires of setting up of an Integrated Coal Based Power Project comprising a 2000 Mega Watt Merchant Power Plant and a captive port in the Nagapattinam District. It is not in dispute that the Government allotted 743.795 Hectares of land in favour of Tridem Port and Power Company Private Limited on long term lease for the purpose of the project subject to conditions. The petitioner owned 835 acres of land. The integrated project would be set up on the entire land of 1600 acres. The period of lease was 99 years. The petitioner vide Letter dated 18.10.2007 submitted two DPRs, one on the power project, and another on the port project along with the financial



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comfort letter issued by the Housing and Urban Development Corporation (HUDCO) and also undertook to perform any relief and rehabilitation work that may be required and to achieve financial closure within one year of the letter dated 14.09.2007. Thus, the three conditions imposed by the Government were fully complied with and one was partially complied with.

7. Based on the proposal of the Tamil Nadu Electricity Board, the Energy Department on 07.11.2007 imposed further condition upon the petitioner, by way of requirement to supply a portion of the power, at a price to be determined by the Tamil Nadu Electricity Regulatory Commission (TNERC). On 11.12.2007, the Collector, Nagapattinam District intimated the Revenue Department regarding the change in the ownership of the land and the land values for the proposed land to be allotted to the petitioner. The petitioner sent a letter on 31.12.2007, requesting the 2nd respondent i.e., Energy Department to amend certain conditions facilitating the petitioner to achieve financial closure and expeditious implementation of the project. Meanwhile, on 21.01.2008, the Government allotted the land to an extent of 743.79.5 Hectares. The Highways Department, Government of Tamil Nadu also granted in-principle permission in favour of the petitioner to establish a



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captive port as part of the Integrated Project vide G.O.Ms.No.30 dated 24.01.2008.

8. The petitioner states that the preliminary works relating to the project were commenced and all the required studies and surveys were conducted and the petitioner obtained environmental clearance of the power project from the Ministry of Environment, Forest and Climate Change in the year 2009. After obtaining the environmental clearance for the power project, more so, after a long and arduous process without any prior notice or intimation to the petitioner / Company, the 1st respondent issued a communication on 30.01.2010 stating that the petitioner had not complied with the conditions stipulated in the Government order and had not obtained financial closure within the stipulated time period of one year nor had the petitioner achieved financial closure for 2000 Mega Watt. Thus, the petitioner filed the first writ petition in W.P.No.24132 of 2010. An interim stay was granted in the said writ petition, which is in force.

9. The petitioner continued their efforts to proceed with the port project hoping that the Company would get back the lease of lands in view



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of the difficult power situation in the 'State'. After many studies and surveys, the petitioner / Company obtained Coastal Regulation Zone (CRZ) clearance from the Tamil Nadu Coastal Zone Management Authority recommending the clearance to the Ministry of Environment, Forest and Climate Change, Government of India on 13.08.2010. Thereafter, the petitioner wrote to the Government to lease the Government lands for formation of road to the port. Many remainders were sent by the petitioner.

10. The 3rd respondent / The Tamil Nadu Maritime Board wrote to the petitioner seeking enhanced license fee. The petitioner on other hand sought for reduction of license fee, in view of the absence of access roads and other supervene events. Under those circumstance, the 3rd respondent issued show cause notice dated 10.01.2012 asking the petitioner to show cause as to why the port license should not be cancelled. The petitioner replied on 02.02.2012 pointing out the reasons for which the financial closure has not been held up. The petitioner has stated that the reasons behind the delay in obtaining financial closure were;

(1) The cancellation of the lease land of the power project by the State Government and the W.P.No.24132 of 2010 filed by the



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petitioner was pending before the High Court and an interim stay was granted.

- (2) The delay in lease of access road to the port.
- (3) The time taken by the Central Government to grant environmental clearance.

11. The Highways Department of the State Government also wrote to the District Collector asking him to expedite the lease of access road. The 3rd respondent / Tamil Nadu Maritime Board extended the time for the petitioner to achieve financial closure up to 31.12.2012. However, even by December 2012, the access road proposal had not been cleared despite many reminders by the petitioner. As a result, the petitioner applied for further extension of time by its letter dated 26.12.2012. The 3rd respondent / Tamil Nadu Maritime Board further extended the time limit for achieving financial closure up to 30.12.2013 by its letter dated 21.10.2013. The petitioner on 23.10.2013, 26.11.2013 again requested the Government to expedite the access road by clearly stating that the financial closure could not be achieved unless access road laid to the port.

12. The project was not able to take off only on account of the actions



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of the respondents namely wrongful cancellation of land allotment for the power project and the non-leasing of the land for access road. The petitioner sought for extension of time for achieving financial closure for the interest of the project. Despite the efforts taken by the petitioner, the 3rd respondent / Tamil Nadu Maritime Board passed an order on 04.03.2014, cancelling all Approvals / Permissions so far granted to the petitioner for developing the port and the relevant lease agreement entered into and directing the petitioner to pay rent even for the period when the port could not be accessed or used for want of access road. Challenging the said order of cancellation dated 04.03.2014 W.P.No.7500 of 2014 was filed.

13. As far as the third writ petition in W.P.No.4455 of 2021 is concerned, it was filed by the Success Power and Infraproject Limited questioning the validity of the Government order issued in G.O.Ms.No.539, Revenue and Disaster Management Department dated 29.09.2020, rejecting the application submitted by the writ petitioner under Section 37-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. The consequential order of the Director of Land Reforms dated 29.12.2020 is also under challenge.



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14. The main contention raised in W.P.No.4455 of 2021 is that the lands purchased by the petitioner belong to the Government and they have committed fault. The petitioner narrating the entire sequence of the events and the efforts taken by the petitioner / Company to expedite the project, established that they were restrained on account of the Government actions.

15. The petitioner in this regard states that they are not able to utilise the lands and the lands have been kept vacant only because of the cancellation orders of the Government of Tamil Nadu and the interim order passed by the High Court in W.P.No.24132 of 2010. The petitioner could not commence the project, since the State Government is acting as an adversary and in an arbitrary manner. The 1st respondent / Revenue and Disaster Management Department issued notice of hearing with regard to the application submitted by the writ petitioner on 29.07.2020 under Section 37-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. The petitioner requested for an adjournment. The order impugned has been passed without hearing the petitioner and therefore, in violation of the principles of nature justice. The order cancelling the application submitted



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under Section 37-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 has got civil consequences and therefore, the respondents have failed to consider all the implications and the delay occurred in developing the project at the instance of the Government. None of the submissions placed by the petitioner before the Director of Land Reforms, Chennai had been considered by the 1st respondent or the 2nd respondent. Thus, the order of rejection of application filed under Section 37-A is in violation of the principles of natural justice. The petitioner states that the official copy of the impugned order issued in G.O.Ms.No.539 dated 29.09.2020 and the consequential order of the 2nd respondent dated 29.12.2020 have not been served on them. Thus, the writ petitions are to be considered.

**REPLY BY THE REVENUE AND THE ENERGY DEPARTMENTS
OF THE GOVERNMENT OF TAMIL NADU:**

16. The Revenue Department states that M/s.Mc Namara International Private Limited having its office in Bangalore have applied for the allotment of 2100 acres Government Poromboke lands at Karapidagai



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Village in Nagapattinam for setting up of “Thirukkuvalai Port and Power Plant”. Request was made to allot the land in the name of Tridem Port and Power Company Private Limited, which is said to be SPV Company of M/s.Mc Namara International Private Limited.

17. Considering the fact that huge employment opportunity to the people of that area will be created, the Government agreed in principle for the allotment of land to an extent of 743.79.5 Hectares in Kilapidagai, Karapidagai (North) and Karapidagai (South) Village, Kilvelur Taluk, Nagapattinam District on long term lease for establishing port and power project to M/s.Tridem Port and Power Company Private Limited subject to the following conditions:

- (1) Submission of Detailed Project Report.
- (2) Submission of proper commitment letters of banks etc., regarding project financing. The Company should also achieve a financial closure within a period of one year from the date of this letter; and
- (3) Submission of undertaking for a Relief and Rehabilitation Programme and local area development programme mutually agreed upon by the Government and the company.
- (4) After these conditions are satisfied, the actual land allotment / prior entry permission shall be given, subject to commencing of



the project construction within one year and completion within 5 years from the date of issuance of land allotment order.

18. In Lr.(Ms) No.537, Revenue, dated 18.09.2007, orders have also been issued to the effect that the lease may be granted on long term basis for 99 years, taking into account the nature of the project and ordered that the other conditions of allotment of land and lease including the land value / prior entry permission etc., shall be decided by the Government based on the Market value / Guideline value etc., after due examination of the Detailed Project Report, Commitment letters from financing agencies for the project, and the undertaking to be submitted by the company regarding Relief and Rehabilitation and local area development programme etc.,

19. The Government in G.O.(MS) No.29, Revenue, dated 21.01.2008 have decided to allot Government poramboke land covering an extent of 743.79.5 Hectares in Keelapidagai, Karapidagai (North) and Karapidagai (South) Villages in Kilvelur Taluk, Nagappattinam District to M/s.Tridem Port and Power Company Private Limited on long term lease basis, for setting up of the Power Project with the following conditions:



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- (1) The extent of land covering up to 5 to 10 meters on both sides of the existing 2 channels within this land site, which are required to drain surplus water, may be excluded from the lease and retained under the control of Public Works Department;
- (2) The Company may be permitted access by way of bridge / road etc., above the channels based on prior clearance to be obtained from Public Works Department by them;
- (3) Prior Entry permission may be granted to the Company now only for the limited purpose of taking up preparatory works, such as soil test, land survey and obtaining statutory approvals etc. from Government of India / State Government, including environment clearance etc;
- (4) The lease amount may be collected up front at the rate of Guideline value or market value, whichever is higher, followed by collection of a nominal lease amount of Rs.1000/- per hectare each year, inclusive of Local Cess, Local Cess Surcharge etc. However, the lease agreement would be concluded and the payment towards the upfront value as well as 1st year's nominal lease amount would be collected only after the completion of the financial closure as well as after obtaining all statutory clearances like environment clearance etc., for the project: and
- (5) The actual possession of the land for construction purpose shall also be handed over to the Company after satisfying the above



conditions listed in (1) to (4) as well as concluding the agreement on Relief & Rehabilitation with the District Collector.

20. M/s.Tridem Port and Power Company Private Limited has submitted Detailed Project Report, Status on the progress made in 2000 MW Merchant Power Plant, Financial Closure etc., before the Government as stipulated in the above Government orders. As the Detailed Project Report involves Technical & Financial aspects, the Chairman, Tamil Nadu Electricity Board has been requested to constitute a committee with Technical and Financial experts to go through the Technical and Financial aspects of the Detailed Project Report to take a decision in the matter.

21. The Collector, Nagapattinam was requested to send a detailed report regarding the state on Ground, progress made by the Company to set up Merchant Power Plant, Market Value / Guideline Value of the land allotted to the Company. The Collector, Nagapattinam District in his letter dated 10.12.2009 has reported after inspecting the land in question, that there is no order for enter upon permission has been issued from the District Administration. Further the lands in Keelapidagai, and Karapidagai North /



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South were surrounded by 3 feet rain water. No other work has been started for setting up of Merchant Power Plant except certain soil investigation and other shady work.

22. The Government had examined the Project Report, Report of the Power Project and Report on the Financial Closure in consultation with the Chairman, Tamil Nadu Electricity Board, Energy and Finance Department and found that the M/s.Tridem Port and Power Company Private Limited had not complied with conditions stipulated in the Government Orders. Neither the project attained financial closure, within the stipulated period of one year nor the company achieved financial closure for 2000 MW. On the other hand, M/s. Tridem Port and Power Company Private Limited has requested for a phase wise approach with a prorated arrangement for leasing of the land, which falls entirely outside the scope of the G.O.(Ms).No.29, Revenue, dated 21.01.2008. Further the commitment letters furnished by the company purported to be from “M/s.Wealthhouse Financial Solutions cannot be taken as proof of Financial Closure. There are no significant show ups in a net search. More importantly, the letter mentions that the Collateral for the proposed 1.65 billion loan will be the land, registered in the name of



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the company. Since the land is not going to be registered in the name of the company, there will be no imminent financial closure. Further an advertisement found in the website, that M/s.Wealthhouse Financial Solution is not a bank, but a firm that can help to raise cash fund for the projects, bridge loans etc., Even more, the financial Closure to the tune of 150 Crore addressed by a few banks are not addressed to M/s.Trident Port and Power Company Private Limited, but M/s.Nagapattinam Energy Private Limited. Moreover, the Company has proposed to scale down its capacity from 2000 MW to only 140 MW initially and they go to 2140 MW in Phase IV. It is also submitted that in G.O.(Ms).No.97, Energy Department, dated 24.11.2009, the Government have ordered for cancellation of Facilitation issued to M/s.Trident Port and Power Company Private Limited, Nagapattinam District among 9 other Companies. In view of the non-compliance of the terms and conditions stipulated by the Government in G.O.'s referred above, and other aspects, the Government after carefully examining the case decided to cancel the orders of allotment of land to M/s.Trident Port and Power Company Private Limited and as such orders were issued by G.O.(Ms).No.19, Revenue, dated 13.01.2010.



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23. The contentions of the respondents are that the petitioner / Company failed to comply with the conditions stipulated by the Government in the allotment order and therefore, they had no option but to cancel the allotment made. Even after the long years the petitioner has not developed the lands nor initiated the action to expedite the project. Merely by sending representations, the petitioner / company had protracted the issue and thus, the Government cancelled the allotment made.

24. In respect of W.P.No.4455 of 2021, the respondents 1 to 3 have stated that the points, which are vital to the case, which reads as under:

- (1) The object of Land Reforms Act is to fix ceiling on land holdings under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and to acquire the excess lands held by person in excess of the ceiling area and to dispose of such lands under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965.
- (2) Section 7 contemplates that “on and from the date of commencement of this Act, no person shall, be entitled to hold land in excess of the ceiling area”.
- (3) Under Section 3(34) of this Act, 'person' has been defined and it includes any company, family, firm, society or association of



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individuals whether incorporated or not or any private trust or public trust.

- (4) The ceiling area in the case of every person is 15 standard acres as per 5(1)(a) of the Act.
- (5) The above provisions clearly indicate that all lands in excess of the ceiling area are to be acquired.
- (6) Section 37-A has been inserted in the Act under the Amended Act 20/1972 which came in to force on 01.03.1972. Under Section 37-A of the Act, if any industrial or commercial undertaking desires to acquire land or hold the acquired land in excess of the ceiling shall make an application for grant of permission to the Government to hold such excess lands for industrial purposes.
- (7) The Petitioner held lands in excess of the ceiling area and applied for grant of permission to hold the lands to an extent of 418.26 acres under section 37-A of the Act for industrial operations vide application dated 5.5.2011.
- (8) Government grant permission to companies if they bonafide carries on industrial operations to hold the excess lands and if the lands have not been utilized for industrial purposes or if the conditions imposed are breached, Government shall cancel the permission and in such cases, it warrants action under section 20 of the Act.



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25. The petitioner has filed this writ petition challenging the Government Order in G.O.Ms.No.539 dated 29.09.2020 rejecting the request of the petitioner made under Section 37-A of the Tamil Nadu Land Reforms Act to hold excess lands. The Government may grant the permission for the whole or part of the land specified in the application made under Section 37-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 as amended, subject to such conditions as they deem fit or the Government may refuse to grant such permission.

26. It has been pointed out in the impugned order that the letter of the Director of Land Reforms and Director of Social Security Schemes in Letter No.E3/1088/2008 dated 18.12.2019 stating that the Industrial Exemption Committee had recommended the application of the petitioner for rejection on the following grounds:

- (a) The company has not furnished the licence / clearance documents.
- (b) The company has not utilized the land and kept waste.
- (c) One of the sellers of the company had kept lands attracting the provisions of the Land Reforms Act.
- (d) The company did not apply for NOC though wet lands are involved.



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- (e) Forest lands are situated within kilometers from the company lands purchased in Karapidagai Village.
- (f) The extent differs from the one mentioned in the application and that one mentioned in the sale deed, EC and Village accounts.

27. The Industrial Exemption Committee has further recommended that one of the sellers to the petitioner namely Kovalan Santhanakrishnan Mohan attracted the provisions of the Land Reforms Act and action needs to be taken under Section 20 of the said Act. It was recommended that after allowing retainable extent of 25.06 acres (equivalent to 15.000 Standard Acres) action under Section 20 may be taken to an extent of 393.82 acres. The Industrial Exemption Committee had also expressed its view that outsourcing of land by aggregator as a common industrial practice is not in violation of Land Reforms Act and that therefore a policy decision had to be taken whether such cases attract Section 20 of the Land Reforms Act or not. In view of the above the Government decided to give an opportunity and issued notice to the petitioner to submit the document or a proper plan of action in support of their claim within a month's time as per Rule 55-A read with 56 (3) of the Tamil Nadu Land Reforms Act. The petitioner company through its letter dated 12.08.2020 had cited Covid Pandemic as a reason



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and requested time. The Government had taken notice of the fact that the petitioner/company had not submitted any documents or any plan of action for utilization of lands. The Government also had taken notice of the fact that the lands have been kept vacant for nine years from the date of passing the impugned order. After carefully examining the recommendations of the Industrial Exemption Committee/Director of Land Reforms arraigned herein as the second respondent and also the reply by the petitioner Company, the Government decided to reject the application of the petitioner / company to hold lands to an extent of 429.09 acres in Kilvelur Taluk and other Taluks in Nagapattinam District as the petitioner / company had not adduced any reason for not having utilized the lands for the purpose for which it applied. The Government also ordered to take action under Section 20 of the Tamil Nadu Land Reforms Act to an extent of 393.82 acres after allowing retainable extent of 25.06 acres (equivalent to 15.000 Standard Acres) against which the petitioner / company has preferred this writ petition.

28. The petitioner's Tridem Port and Power Company Private Limited and its Subsidiaries purchased the lands along with the Government allotted lands for the purpose of carrying out its thermal power project and port



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projects. But the Government vide its order in G.O.Ms.No.19, Revenue Department dated 13.01.2010 has cancelled the allotment of land to the Tridem Port and Power Company Private Limited to an extent of 743.79.5 Hectares for the reason that the Company has not complied with the conditions stipulated in the Government orders. The report received from the District Revenue Officer, Nagapattinam on the application of the petitioner / Company does not contain certain basic documents such as profile of the Company project report for the proposed port and generation of coal based electricity, tentative plan action etc. They were called for from the Company vide Commissioner of Land Reforms letter dated 23.05.2014. The petitioner / Company has submitted letters on 03.11.2014 and 31.12.2014 stating that the Company has purchased entire extent of land from one Thiru.Kovalan Santhana Krishnan Mohan in the year 2007 and kept the lands unutilised. The Revenue Divisional Officer issued notice to the petitioner / Company on several occasions clearly informing the Company that they have to send proper explanation with necessary evidences as to why action cannot be initiated against the acquisition of land under Section 20 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1960 and excess lands cannot transferred to the Government



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with effect from the date of such acquisition. Opportunities were granted to the petitioners to establish their case, but the petitioners were unable to establish their case by producing documents that the Government allotted the lands and the purchased lands were utilised for industrial purposes.

29. Thiru. Kovalan Santhanakrishnan Mohan who sold an extent of 424.24 acres to the petitioner / Company is attracted under Land Reforms Act as he was holding lands in excess of the ceiling area. As per Section 5(1)(a) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 as amended by Act, 17/1970, the ceiling area of a person or family consisting of five members is 15 Standard Acres (equivalent to 12.00 to 30.00 ordinary acres in case of wet lands and 37.50 to 60.00 ordinary acres in case of dry lands). But Thiru Kovalan Santhanakrishnan Mohan was holding and extent of 424.24 ordinary acres which exceeds the ceiling area allowable to a person or family. Hence he was attracted under Land Reforms Act and the lands sold by him to the petitioner / Company attracted under section 20 of the Land Reforms Act. Since the sale of excess lands attracts Section 20 of the Act and becomes void and was transferred back to Government, and grant of permission under section 37-A of the Act for the



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above lands cannot be considered. Therefore, the contentions of the petitioner company in these paragraphs have no merits at all.

30. Since the petitioners have not complied with the requirements, the exemptions granted were cancelled by the Government.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

31. The learned Senior Counsel appearing on behalf of the writ petitioners mainly contended that the orders impugned are in violation of the principles of natural justice. No opportunity was afforded to the petitioners and thus, the orders impugned are liable to be set aside. When the orders of respondents have civil consequences, the respondents ought to have granted an opportunity of hearing before passing of the orders. The petitioners relied in this regard on the judgment of the Hon'ble Supreme Court in the case of *A.K.Kripak and Others vs. Union of India and Others* reported in *1969 (2) SCC 262* and in the case of *Swadeshi Cotton Mills vs. Union of India* reported in *1981 (1) SCC 664*.



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32. The petitioners also relies on the judgment of the Hon'ble Supreme Court of India in ***Rajesh Kumar and Others Vs. Deputy Commissioner of Income Tax*** reported in ***2007 2 SCC 181***, wherein the Hon'ble Supreme Court of India held that administrative decisions, which has civil consequences on the petitioner cannot be passed in violation of principles of natural justice. Any orders passed, without hearing the petitioner, is in violation of Article 14 of the Constitution of India. Therefore, on this ground alone, the impugned orders are liable to be set aside.

33. The learned Senior Counsel appearing on behalf of the petitioners reiterated that non achievement of financial closure is due to the arbitrary acts of the respondents. The Respondents herein have passed orders dated 13.01.2010 (impugned in W.P.No.24132 of 2010) and 04.03.2014 (impugned in W.P.No.7500 of 2014) on the ground that financial closure has not been achieved by the Petitioner. The order dated 13.01.2010 was passed abruptly without hearing the Petitioner and by virtue of the said order, the lands which were allotted to the Petitioner were cancelled. Due to the said order, the Petitioner herein could, no longer negotiate with the



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Banks to achieve financial closure. Thereafter, on 04.03.2014, the Tamil Nadu Maritime Board, without hearing the Petitioner, again cancelled the allotment of the waterfront area on the ground that financial closure could be achieved.

34. As seen from above, the sole reason the Petitioner could not achieve financial closure was because of the cancellation order by the Respondents. The Respondents cannot on one hand, cancel the allotment of lands to the Petitioner and on the other hand expect the Petitioner to achieve financial closure. Notwithstanding the fact that the orders have been passed without hearing the Petitioner, the orders are also arbitrary.

35. The actions of the Respondents are hit by theory of proportionality. The Respondents while passing the impugned orders have abused their discretionary powers. The Hon'ble Supreme Court of India in ***Maharashtra Land Development Cooperation V. State of Maharashtra and another*** reported in ***2011 15 SCC 616*** held as under:

“60. However, the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury



Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680] principle of reasonableness has given way to the doctrine of proportionality. Through his decision in the celebrated case of *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , Lord Diplock widened the grounds of judicial review. He mainly referred to three grounds upon which administrative action is subject to control by judicial review. The first ground being “illegality”, the second “irrationality” and the third “procedural impropriety”. He also mentioned that by further development on a case-to-case basis, in due course, there may be other grounds for challenge. He particularly emphasised the principles of proportionality. Thus, in a way, Lord Diplock replaced the language of “reasonableness” with that of “proportionality” when he said: (410 G)

“By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680] unreasonableness'... It applies to a decision which is so outrageous in its defiance of



logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

61. *The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between particular goals and the means employed to achieve those goals, so that administrative action impinges on the individual rights to the minimum extent to preserve public interest. Thus implying that administrative action ought to bear a reasonable relationship to the general purpose for which the power has been conferred. The principle of proportionality therefore implies that the court has to necessarily go into the advantages and disadvantages of any administrative action called into question. Unless the impugned administrative action is advantageous and in public interest such an action cannot be upheld. At the core of this principle is the scrutiny of the administrative action to examine whether the power conferred is exercised in proportion to the purpose for which it has been conferred. Thus, any administrative authority while exercising a discretionary power will have to necessarily establish that its decision*



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is balanced and in proportion to the object of the power conferred.”

36. In addition to the above, the Respondents herein, in concert, have acted arbitrarily and have acted in a manner prejudicial to the Petitioner. The principle of promissory estoppel applies to the present case.

37. The Petitioner invested huge amounts on the promise of the allotment made by the Respondents. The Petitioner also complied with the conditions, which were modified by the Respondents from time to time. Having complied with the conditions, the Respondents abruptly cancelled the allotment, on the grounds which the Respondents were aware all along. This cancellation led to non-achievement of financial closure. The non-achievement of financial closure led to cancellation of allotment by Tamil Nadu Maritime Board. Therefore, the Respondents have altered their position to the detriment of the Petitioner. Therefore, on this ground also, the Writ Petitions are liable to be allowed. The Petitioner herein relies on the judgement of this Court in ***SIPCOT V. Singapore Realty Pvt. Ltd.*** reported in ***2014 (3) MLJ 385***.



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38. The learned Senior Counsel appearing on behalf of the petitioners reiterated that dismissal of 37-A Application was due to the pendency of the proceedings. The reason for dismissal of SPIPL's 37-A Application (impugned order in W.P.No.4455 of 2021) is that SPIPL did not utilize the lands. Tridem, through SPIPL was forced to acquire the lands privately because some of the lands allotted by the Respondents to Tridem were wet lands and therefore, could not be utilized. In hope that the Respondents would permit the Tridem to continue with the project, SPIPL acquired private lands.

39. As stated above, the Respondents cancelled the entire allotment, thereby paralysing the project. Since W.P.Nos.24132 of 2010 and 7500 of 2014 challenging the above said cancellation was pending, SPIPL could not utilize the lands. Therefore, the Respondents again have acted arbitrarily, by cancelling the allotment on one hand, and by taking advantage of the said cancellation, rejected SPIPL's 37-A Application. Moreover, the order rejecting SPIPL's 37-A Application is without hearing SPIPL and therefore, in violation of principles of natural justice.



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40. The learned Senior Counsel appearing on behalf of the petitioners relied on the following judgments as under:

(a) The Hon'ble Supreme Court in the case of ***A.K.Kraipak and Others Vs. Union of India*** reported in **(2969) 2 SCC 262**, held as follows:

“13.The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its



vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The following observations of Lord Parker C.J., in Regina v. Criminal Injuries Compensation Board Ex parte Lain [(1967) 2 QB 864 at p. 881] are instructive.

“With regard to Mr Bridge's second point I cannot think that Atkin L.J., intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the Electricity Commissioners case the rights determined were at any rate not immediately enforceable



rights since the scheme laid down by the commissioners had to be approved by the Minister of Transport and by resolutions of Parliament. The Commissioners nevertheless were held amenable to the jurisdiction of this court. Moreover, as can be seen from Rex v Postmaster-General Ex parte Carmichael [(1928) 1 KB 291] and Rex v. Boycott Ex parte Kesslay [(1939) 2 KB 651] the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.

The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court, later its ambit was extended to statutory tribunals determining a lis inter partes. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing



a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended, See Reg.v. Manchester Legal Aid Committee, Ex parte R.A. Brand & Co. Ltd. [(1952) 2 QB 413] to cases in which the decision of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case this court has jurisdiction to supervise that process.

We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this court. It is, as Mr Bridge said, 'a servant of the Crown charged



by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown.’ It is clearly, therefore, performing public duties”.

20. *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. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it*



functioned to act judicially there was no room for the application of the rules of natural justice. 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 enquiries. 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 [Civil Appeal No. 990/68, decided on 15-7-1968] 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



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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.”

(b) The Hon'ble Supreme Court in the case of **Swadeshi Cotton Mills**

Vs. Union of India reported in (1981) 1 SCC 664, held as follows:

“30. In the language of V.R. Krishna Iyer, J. (vide Mohinder Singh Gill case [(1970) 2 Guj LR 361]): “... subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play ... Its essence is good conscience in a given situation; nothing more — but nothing less.” (SCC p. 434, paras 47 and 48)

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in A.K. Kraipak [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619]). If a statutory provision either specifically or by inevitable implication excludes the



application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see Union of India v. Col. J.N. Sinha [(1969) 2 All ER 1207])

32. The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is “a duty lying upon everyone who decides something”, in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, “convenience and justice” — as Lord Atkin felicitously put it — “are often not on speaking terms [General Medical Council v. Spackman, 1943 AC 627, 638] ”.



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102. Natural justice, like ultra vires and public policy, is a branch of the public law and is a formidable weapon which can be wielded to secure justice to the citizen. It is 'productive of great good as well as much mischief. While it may be used to protect certain fundamental liberties, civil and political rights, it may be used, as indeed it is used more often than not, to protect vested interests and to obstruct the path of progressive change. In the context of modern welfare legislation, the time has perhaps come to make an appropriate distinction between natural justice in its application to fundamental liberties, civil and political rights and natural justice in its application to vested interests. Our Constitution, as befits the Constitution of a Socialist Secular Democratic Republic, recognises the paramountcy of the public weal over the private interest. Natural justice, ultra vires, public policy, or any other rule of interpretation must therefore, conform, grow and be tailored to serve the public interest and respond to the demands of an evolving society.

106. The principles of natural justice have taken deep root in the judicial conscience of our



people, nurtured by Dr Bina Pani [AIR 1967 1269 : (1967) 2 SCR 625], Kraipak [(1969) 2 SCC 262 : (1970) 1 SCR 457], Mohinder Singh Gill [(1978) 1 SCC 405 : (1978) 2 SCR 272], Maneka Gandhi [1964 AC 40 : (1963) 2 All ER 66 (HL)] . They are now considered so fundamental as to be “implicit in the concept of ordered liberty and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced.



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The presumption is also weak where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, pre-emptive action may be a strategic necessity. There may then be no question of observing natural justice. Even in cases of pre-emptive action, if the statute so provides or if the courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation. Seeming judicial ambivalence on the question of the applicability of the principles of natural justice is generally traceable to the readiness of Judges to apply the principles of natural justice where no question of the public interest is involved, particularly where rights and interests other than property rights and vested interests are involved and the reluctance of Judges to apply the principles of natural justice where there is suspicion of public mischief, and only property rights and vested interests are involved.”



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WEB COPY (c) The Hon'ble Supreme Court in the case of ***Maharashtra Land***

Development Corporation and Others Vs. State of Maharashtra and

Another reported in ***(2011) 15 SCC 616***, held as follows:

“59. The Wednesbury principle was enunciated by Lord Greene MR in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680] To quote the learned Judge on the principle enunciated: (KB p. 228)

“... What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the



subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters.”

60. *However, the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680] principle of reasonableness has given way to the doctrine of proportionality. Through his decision in the celebrated case of Council of Civil Service Unions v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)], Lord Diplock widened the grounds of judicial review. He mainly referred to three grounds upon which administrative action is subject to control by judicial review. The first ground being “illegality”, the second “irrationality” and the third “procedural impropriety”. He also mentioned that by further development on a case-to-case basis, in due course, there may be other grounds for challenge. He particularly emphasised the principles of proportionality. Thus, in a way, Lord Diplock replaced the language of “reasonableness” with that of*



“proportionality” when he said: (410 G)

“By ‘irrationality’ I mean what can by now be succinctly referred to as ‘Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680] unreasonableness’ It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

61. The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between particular goals and the means employed to achieve those goals, so that administrative action impinges on the individual rights to the minimum extent to preserve public interest. Thus implying that administrative action ought to bear a reasonable relationship to the general purpose for which the power has been conferred. The principle of proportionality therefore implies that the court has to necessarily go into the advantages and disadvantages of any administrative action called into question. Unless the impugned administrative



action is advantageous and in public interest such an action cannot be upheld. At the core of this principle is the scrutiny of the administrative action to examine whether the power conferred is exercised in proportion to the purpose for which it has been conferred. Thus, any administrative authority while exercising a discretionary power will have to necessarily establish that its decision is balanced and in proportion to the object of the power conferred.

62. This principle has found favour in recent times with this Court, and a number of decisions reflect the shift towards the doctrine of proportionality. In Bhagat Ram v. State of H.P. [(1983) 2 SCC 442 : 1983 SCC (L&S) 342] this Court held that if the penalty imposed is disproportionate to the gravity of the misconduct, it would violate Article 14 of the Constitution.”

(d) The Hon'ble Supreme Court in the case of ***The State Industries Promotion Corporation of Tamil Nadu Limited, represented by the Managing Director Vs. M/s.Singapore Reality Private Limited*** reported in ***(2014) SCC Online Mad 655***, held as follows:



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“33. The consequential cancellation of allotment orders were issued pursuant to the impugned Government Order dated 17.2.2006. It is relevant to note at this juncture that even if the environmental clearance is obtained by the petitioner company within a reasonable time, the 1st phase of the project can be completed within the stipulated time i.e. prior to 15.12.2007, as about 22 months are left for the expiry of the time granted as per the MOU, allotment orders as well as the sale deeds. Hence, the reason stated in the impugned Government Order dated 17.2.2006 that the contract became frustrated due to impossibility of performance is an imaginary and invented reason which is contrary to facts. The said reason was also objected as there was total non-application of mind on the part of the respondents while passing the impugned orders.

37. Issuance of notice before taking an adverse decision to the party likely to be affected is in compliance of principles of natural justice, which is now recognised as a constitutional right unless the same is expressly prohibited by Statute, in this case by MOU. On careful perusal of MOU, it is evident that there is no clause excluding



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applicability of principles of natural justice. It is well settled proposition of law that unless the Statute prohibits, issuance of notice before deciding the issue is now an implied requirement.

46. In the light of the undisputed facts as well as non-issuance of notice prior to the cancellation of MOU and the allotment orders with a direction to return the lands, the learned Advocate General is not justified in contending that the High Court ought not to have entertained the writ petitions and in the light of having alternative remedy for moving arbitration process.

55. As already stated in this case, after elaborate negotiations, an understanding was reached and MOU was signed. Pursuant to which, allotment orders were issued by the SIPCOT and the sale deeds were also executed by paying 80% of the sale price with condition to pay the remaining within three years and possession was handed over and the project work also commenced by laying road etc. and the petitioner company also sent balance sale price by demand draft which was returned. Thus the principle of Promissory Estoppel is applicable to this case in



full force. The impugned orders having been passed on 17.2.2006 and 28.2.2006 respectively, the said orders are unsustainable.”

(e) The Hon'ble Supreme Court in the case of ***Rajesh Kumar and Others Vs. DY.CIT and Others*** reported in ***(2007) 2 SCC 181***, held as follows:

20. Principles of natural justice are based on two basic pillars:

(i) Nobody shall be condemned unheard (audi alteram partem).

(ii) Nobody shall be judge of his own cause (nemo debet esse judex in propria sua causa).

21. Duty to assign reasons is, however, a judge-made law. There is dispute as to whether it comprises of a third pillar of natural justice. (See S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] and Reliance Industries Ltd. v. Designated Authority [(2006) 10 SCC 368 : 2006 AIR SCW 4911].)

22. However, the other view is that the question as to whether reasons are required to be



assigned is a matter of legislative policy which should be left to the decision of Parliament. In Raipur Development Authority v. Chokhamal Contractors [(1989) 2 SCC 721] a Constitution Bench opined: (SCC pp. 751-52, para 35)

“35. It is no doubt true that in the decisions pertaining to administrative law, this Court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rule. It would be in the interest of the world of commerce that the said rule is confined to the area of administrative law. We do appreciate the contention, urged on behalf of the parties who contend that it should be made obligatory on the part of the arbitrator to give reasons for the award, that there is no justification to leave the small area covered by the law of arbitration out of the general rule that the decision of every judicial and quasi-judicial body should be supported by reasons. But at the same time it has to be borne in mind that what applies generally to settlement of disputes by authorities



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governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes. As stated elsewhere in the course of this judgment if the parties to the dispute feel that reasons should be given by the arbitrators for the awards it is within their power to insist upon such reasons being given at the time when they enter into arbitration agreement or sign the deed of submission. It is significant that although nearly a decade ago the Indian Law Commission submitted its report on the law of arbitration specifically mentioning therein that there was no necessity to amend the law of arbitration requiring the arbitrators to give reasons, Parliament has not chosen to take any step in the direction of the amendment of the law of arbitration. Even after the passing of the English Arbitration Act, 1979 unless a court requires the arbitrator to give reasons for the award [vide sub-sections (5) and (6) of Section 1 of the English Arbitration Act, 1979], an award



is not liable to be set aside merely on the ground that no reasons have been given in support of it.”

23. We, however, need not dilate on the said question being not very necessary for the purpose of this case. But it is beyond any cavil that ordinarily unless excluded by operation of a statute, the superior courts while exercising power of judicial review shall proceed on the basis that assignment of reasons is imperative in character. When an authority, be it administrative or quasi-judicial adjudicates on a dispute and if its order is appealable or subject to judicial review, it would be necessary to spell out the reasons therefor. While applying the principles of natural justice, however, the court must also bear in mind the theory of useless formality and the prejudice doctrine.

26. Effect of civil consequences arising out of determination of lis under a statute is stated in State of Orissa v. Dr. Binapani Dei [(1967) 2 SCR 625 : AIR 1967 SC 1269] . It is an authority for the proposition when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice



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are required to be followed. In such an event, although no express provision is laid down in this behalf, compliance with principles of natural justice would be implicit. In case of denial of principles of natural justice in a statute, the same may also be held ultra vires Article 14 of the Constitution.”

ARGUMENTS ON BEHALF OF THE STATE:

41. The learned Additional Advocate General appearing on behalf of the ‘State’ mainly contended that the Government Poromboke lands were allotted covering an extent of 743.795.5 Hectares on long term lease basis for setting up of the power project with conditions. The petitioner Tridem Port and Power Company Private Limited has submitted detail project report, status on progress made in 2000 Mega Watt, Merchant Power Plant, financial closure etc., before the Government as stipulated in the Government orders. A committee was constituted with technical and financial experts to go through the technical and financial aspects with the details submitted to take a decision. The Collector, Nagapattinam District in letter dated 10.12.2009 has reported after inspecting the land in question



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that there is no order for enter upon permission has been issued from the District Administration. No other work has been sorted for setting up of Merchant Power Plant except certain soil investigation and other shady works. The petitioner / Company had not complied with the conditions stipulated in the Government orders. Neither the project attained the financial closure within the stipulated period of one year nor the Company achieved financial closure for 2000 Mega Watt. On the other hand, M/s.Tridem Port and Power Company Private Limited has requested for a phase wise approach with a prorata arrangement for leasing of the land, which falls entirely outside the scope of G.O.Ms.No.29, Revenue dated 21.01.2008.

42. The letters furnished by the Company which purport to be from M/s. Wealthhouse Financial Solutions cannot be taken as a proof of financial closure. There are no significant show off in the net search. An advertisement was found in the website that M/s. Wealthhouse Financial Solutions is not a Bank but a firm that can help to raise cash, funds for the projects, bridge loans etc. Even more the financial closure to the tune of Rs.150/- Crores addressed by a few Banks are not addressed to M/s.Tridem



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Port and Power Company Private Limited but M/s.Nagapattinam Energy Private Limited. The Company has proposed to scale down its capacity from 2000 Mega Watt to only 140 Mega Watt initially and they go to 2140 Mega Watt in Phase IV. The Government carefully considered the case and accordingly decided to cancel the orders of allotment of lands to M/s.Trident Port and Power Company Private Limited and consequently, G.O.Ms.No.19, Revenue dated 13.01.2010 has been issued.

REPLY BY THE THIRD RESPONDENT:

43. The learned counsel appearing on behalf of the 3rd respondent / Tamil Nadu Maritime Board made a submission that on 11.09.2007 proposals were received from the Company. The Authorities communicated in principle approval to the Company on 29.01.2008, which was issued in G.O.Ms.No.30 dated 24.01.2008. Declaration of Thirukkuvalai Port was made in G.O.Ms.No.111, Highways and Minor Ports Department dated 28.04.2008. The conditions for completion of financial closure within a period of one year from the date of Government order i.e. on or before 27.04.2009 was issued in G.O.Ms.No.112 dated 28.04.2008. Status of the project being reviewed during the Board Meetings held during the said



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period. Accordingly, license agreement was executed with the Company on 12.06.2008.

44. The Company failed to complete the financial closure within a period of one year as stipulated in the order of approval and as stipulated in the license agreement. Consequently, a show cause notice was issued to the Company on 10.01.2012 asking reasons for not achieving the financial closure on or before 27.04.2009. The Company submitted a reply on 02.02.2012. The Board accepted the reasons and gave extension of time period up to 31.12.2012 for achieving financial closure as per the 73rd Board Meeting Resolution on 26.04.2012. The Board sent a remainder on 28.05.2012 requesting the Company to inform the status of achieving financial closure. Second remainder letter was sent on 29.06.2012 and the third remainder letter on 30.07.2012, fourth remainder letter on 08.08.2012, fifth remainder letter on 03.10.2012, sixth remainder letter on 07.11.2012 and seventh remainder letter on 12.12.2012.

45. On 26.12.2012, the petitioner / Company replied that due to down turn and huge MPS, Banks are very reluctant to fund infrastructure projects



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and due lack of access road to Thirukkuvalai Port, which was beyond their control and they requested the Maritime Board to extend the time limit for achieving financial closure. The Board in its 76th Board Meeting held on 16.05.2013 noted the difficulties faced by the Company in obtaining environmental clearances and extended time period up to 30.06.2013 for achieving financial closure. The Company requested the Commissioner of Land Administration to lease poromboke lands to form approach road so as to achieve financial closure. Maritime Board further extended the time limit in its 78th Board Meeting up to 31.12.2013. On 03.02.2014, the Company replied that they are unable to proceed with the project since the Government cancelled lease of the lands vide G.O.Ms.No.19, Revenue dated 13.01.2010 and they have obtained a stay before the Court. Thereafter, in 80th Board Meeting held on 04.03.2014, the status of the project was reviewed and the Board issued a letter for cancellation / withdrawal of all the Approvals / Permissions in the Thirukkuvalai Port. Challenging the same the W.P.No.7500 of 2014 was filed.

46. The learned counsel for the 3rd respondent contended that an interim stay was granted by this Court on condition that the petitioner shall



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deposit a sum of Rs.3 Crores in two equated monthly installments to the respondents. The writ petitioner filed writ appeal in W.A.No.498 of 2014 and the said writ appeal was dismissed as withdrawn with liberty to the appellant to move to the appropriate Forum. Admittedly, the interim order granted on condition to pay a sum of Rs.3 Crores was not been complied with by the petitioners even now.

47. The learned counsel for the 3rd respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of ***St.Mary's Education Society and Another vs. Rajendra Prasad Bhargava and Others*** reported in (2023) 4 SCC 498, wherein, the Apex Court held as follows:

“54. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

75. We may sum up our final conclusions as



under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.”

DISCUSSION:

48. The Government lands covering an extent of 743.79.5 Hectares was allotted long lease basis for setting up of power project with the conditions. The conditions stipulated by the Government for the utilisation of the lands allotted were not complied with by the petitioners. The detailed project reports status on the progress made in 2000 Mega Watt in Merchant



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Power Plant, financial closure etc., was placed before the Government by the Company for verification. At the request of the Chairman, Tamil Nadu Electricity Board a Committee was constituted with technical and financial experts to go through the technical and financial aspects in the detailed project report to take a decision in the matter. Meanwhile, the Collector, Nagapattinam conducted an inspection and found that there was no much progress made by the petitioner / Company. No work has been started for setting up of Merchant Power Plant except certain soil investigation and other shady works. The Government carefully examined the power project and reported on the financial closure in consultation with the Chairman, Tamil Nadu Electricity Board, Energy and Finance Departments and found that M/s.Tridem Port and Power Company Private Limited had not complied with the conditions stipulated in the Government orders. Neither the project attained the financial closure within the stipulated period of one year nor the Company achieved financial closure for 2000 Mega Watt. On the other hand, the Company made a request for Phase wise approach with the prorated arranging of the leasing of the land, which falls outside the scope of the Government order issued in G.O.Ms.No.29 dated 29.01.2008. The authorities found that the financial closure to the tune of Rs.150 crores



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addressed by the few Banks are not addressed to the M/s.Tridem Port and Power Company Private Limited but M/s.Nagapattinam Energy Private Limited. Moreover, the Company has proposed to scale down its capacity from 2000 Mega Watt only to 140 Mega Watt initially and they go to 2140 Mega Watt in Phase IV.

49. Considering the project details elaborately by appointing the Committee of experts, the Government considered the non-viability and the inaction of the petitioner / Company and consequently, cancelled the allotment through the impugned order in G.O.Ms.No.19 Revenue dated 13.01.2010.

50. The Government has elaborately considered the progress made by the petitioner / Company as per the conditions and as per the project report. Since the petitioners have completely failed in developing the project within the time limit as contemplated, the Government cancelled the allotment made.



WEB COPY 51. Regarding the rejection of application submitted by the petitioner under Section 37-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1960, to hold excess lands, the Government considered the facts and found that the permissions granted to utilise the excess lands for industrial purposes under the Land Reforms Act has not been utilised by the petitioner / Company. Since the lands were not utilised for industrial purposes under the Land Reforms Act, the petitioner was found ineligible to hold excess lands and consequently, the Government issued G.O.Ms.No.539 dated 29.01.2020, which is impugned in W.P.No.4455 of 2021.

52. Though the petitioner has stated that no sufficient opportunity was granted to them, such submissions are not established through documents and evidences. Contrarily, the respondents could establish that sufficient opportunities were granted to the petitioners as per their project report. Even the Tamil Nadu Maritime Board has considered the request of the petitioners on several occasions and granted time to comply with the financial closure. Several extensions were granted by the Tamil Nadu Maritime Board for the purpose of achieving financial closure. Despite the



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opportunities granted the petitioners could not achieve the financial closure.

The original time of one year granted expired on 27.04.2009 and the Maritime Board has extended the time up to 30.06.2013 for achieving financial closure. Even in the year 2013, the petitioners have not achieved the financial closure and finally the Maritime Board cancelled all the Approvals / Permissions given for Thirukkuvalai Port.

53. Beyond all the violations and non-compliance of the conditions, the petitioners have not even complied the conditional interim order passed by this Court in M.P.No.1 of 2014 in W.P.No.7500 of 2014. This Court granted an interim stay on condition that the petitioner shall deposit a sum of Rs.3 crores in two equated monthly installments with the respondents. The said order has not been complied with by the petitioner admittedly.

54. The lands were allotted by the Government in G.O.Ms.No.29, Revenue dated 21.01.2008.

55. In-principle permission granted for development of captive port near Vettaikaran Irruppu in Nagapattinam District was granted by the



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Government in G.O.Ms.No.30 Highways Department dated 24.01.2008.

Even after grant of stay in the first writ petition in W.P.No.24132 of 2010, the petitioner could not achieve the financial closure. No progress has been made as per the project report submitted by the petitioner. Almost 15 years lapsed from the date of allotment of land by the Government. In the year 2014 the Maritime Board cancelled all the Approvals / Permissions. Till today there is no progress, despite the interim order and the condition imposed in the interim order also has not been complied with by the petitioners.

56. The facts of the case establishes that the petitioners could not establish any acceptable reason for the purpose of considering the relief. On account of efflux of time the petitioner / Company is not in a position to complete the project as per their project report submitted in the year 2008.



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57. Accordingly, all the Writ Petitions are devoid of merits and stand dismissed. Consequently, connected Miscellaneous Petition are closed.
There shall be no order as to costs.

07.09.2023

Jeni
Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

To

- 1.The Secretary,
State of Tamil Nadu,
Revenue Department,
Secretariat,
Chennai – 600 009.
- 2.The Principal Secretary to the Government,
Energy Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.
- 3.The Vice Chairman & Chief Executive Officer,
Tamil Nadu Maritime Board,
Vairam Complex, 2nd Floor,
22,Sir Theagaraya Road,
T.Nagar,
Chennai – 600 017.



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4.The President,
Karappidagai North Panchayat,
Karappidagai North Sethi,
Kil Velur Taluk,
Nagapattinam District.

5.The Member Secretary
The Tamil Nadu Maritime Board,
No.171, South Kesavaperumalpuram,
Greenways Road,
Chennai – 600 028.

6.The Secretary,
State of Tamil Nadu
Highways and Minor Ports Department,
Secretariat, Chennai – 600 009.

7.The Additional Chief Secretary to the Government,
Revenue and Disaster Management Department,
Secretariat, Fort St. George, Chennai – 600 009.

8.The Director of Land Reforms,
Chepauk,
Chennai – 600 005.

9.The Commissioner of Land Reforms,
Chepauk,
Chennai – 600 005.

10.The Sub Collector,
Nagapattinam,
Tamil Nadu.

11.District Revenue Officer,
Nagapattinam District,
Tamil Nadu.



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12.The Revenue Divisional Officer,
Nagapattinam District,
Tamil Nadu.

13.The Tahsildar,
Kilvelur Taluk,
Nagapattinam District,
Tamil Nadu.



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S.M.SUBRAMANIAM, J.

Jeni

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