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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 11th September, 2024**Decided on: 15th October, 2024**

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**W.P.(C) 11422/2019, CM APPL. 46999/2019 & CM APPL.
46701/2019****SHRISHTI INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD.****..... Petitioner****Through: Mr. Jayant Mehta, Senior
Advocate with Mr. Vijay K.
Singh, Mr. Kumar Shashwat
Singh and Mr. Ankur
Mishra, Advocates****V****AIRPORT AUTHORITY OF INDIA & OTHERS****..... Respondents****Through: Mr. Digvijay Rai, Advocate
with Mr. Archit Mishra and
Mr. Raghav Ali Khan,
Advocates for Airports
Authority of India/R-1
alongwith Mr. Kamal Kant
Soni, Officer of the Airports
Authority of India for R-1****CORAM****HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN****J U D G M E N T**



1. The petitioner filed the present writ petition under Article 226 of the Constitution of India for issuance of appropriate writ for quashing the order vide reference no. CHQ File: AAI/20012/21/2011-ARI (NOC); Case No. ER/241/2010; NOCAS ID: KOLK/EAST/B/111912/017 dated 08.03.2019 (hereinafter referred to as “**the impugned order**”) whereby the respondent no.1/Airport Authority of India (AAI) rejected the request of the petitioner for Higher Top elevation of Tower-II.

2. The factual background of the case is that the petitioner has made huge investment in a five star complex at Mouza Jatragachi, AA-II/CBD/2, Action Area-II, New Town, Rajarhat (West Bengal), District North 24, Parganas, State of West Bengal which is at a distance of 7.06 kilometers from the Kolkata Airport. The complex comprises of two Towers, i.e. Tower-I which includes commercial and rental units and Tower- II, which is a building of serviced apartments. Since the two Towers are close to the Kolkata Airport, the petitioner has to obtain a no objection certificate (NOC) from the respondent no.1/AAI under applicable law, i.e. the Aircraft Act, 1934 (hereinafter referred to as “**the Act**”).



2.1 The petitioner applied for the NOC and the respondent no.1/AAI in pursuance of Letter no. Ry/SC7/16-A/724 dated 13.02.2006 issued the First NOC for the construction of Tower-II on 26.07.2006 which was valid for a period of three years i.e. till 26.07.2009. Under this NOC, a height of the structure 2.75 M (site elevation) plus (+) 141.78M height i.e. 144.53 Meters AMSL (above mean sea level) was approved for both Tower-I and Tower-II, under then applicable 1988 Notification. The construction of Tower-II could not be completed within the NOC period i.e. till 26.07.2009 and as such applied for a revalidation/renewal of the First NOC in 2010, to complete the construction of Tower-II. The respondent no.1/AAI informed the petitioner on 13.12.2010 that its case was being considered for a height of 88.64 Meters AMSL for Tower-II, subject to the receipt of a revised and duly authenticated section plan.

2.2 The petitioner being aggrieved by the sudden reduction in the Tower height made representations with the respondent no.1/AAI seeking a reconsideration of the height of Tower-I to the original allotted height of 144.53 Meters AMSL and a height of 133.321 Meters AMSL for Tower-II as the petitioner had made investments in



Tower-I and Tower-II on the basis of the approved plans under the Original NOC dated 26.07.2006 and this sudden reduction in tower height would severely jeopardize the commercial interests of the petitioner and the financial investors.

2.3 The respondent no. 1/AAI on 13.06.2014 issued the Second NOC under the now applicable 2010 Notification (superseding the earlier 1988 Notification and the interim 2008 Notification) which approved the height for Tower-I upto 144.53 Meters AMSL and for Tower-II for 90.30 Meters AMSL from the existing radar as on 13.06.2014 subject to increase upto 105.48 Meters AMSL after the commissioning of the proposed Air Surveillance Radar (ASR) at the Kolkata Airport. The petitioner being aggrieved by the Second NOC dated 13.06.2014 which reduced the height of Tower-II to 90.30 Meters AMSL from the existing radar upto a maximum of 105.48 Meters AMSL subject to the commissioning of the proposed ASR approached the respondent no.3 on 23.06.2014 protesting the arbitrary reduction of the height of Tower-II and urging it to take into account the fact that the petitioner's case pertained to revalidation/renewal and not for an NOC to be issued *de novo* that



the construction had been undertaken only after the First NOC and that both the Towers do not pose any restriction to the radar visibility and are well within permissible height limits.

2.4 The respondent no.1/AAI on 03.07.2014 issued a Final NOC based upon the approval of the respondent no. 3 which approved the height of Tower-I upto 144.53 Meters AMSL and approved the height of Tower-II upto 90.30 Meters AMSL from the existing radar. The Final NOC also stated that an additional height of 15.18 Meters AMSL for Tower-II may be permitted after commissioning of the proposed ASR. The Final NOC was valid for a period of 5 years from the date of issue i.e. till 03.07.2019. The petitioner appealed to the respondent no.3 against the reduced height of Tower-II granted by the respondent no.1/AAI in the Final NOC dated 03.07.2014. The petitioner was given an opportunity of being heard on 24.06.2015 but the respondent no.3 rejected the case of the petitioner by stating that request of the petitioner that multi radar criteria should be applied, cannot be considered since Kolkata Airport had a single radar. The respondent no. 1/AAI wrote a letter dated 29.07.2015 to the petitioner



directing it to reduce the height of Tower-II to the approved height as per the Final NOC dated 03.07.2014.

2.5 The petitioner being aggrieved by the Final NOC dated 03.07.2014, Order dated 24.06.2015 and the letter dated 29.07.2015 filed a Writ Petition bearing no. W.P.(C) 7652/2015 before this Court on 11.08.2015. The Ministry of Civil Aviation (Height Restrictions for Safeguarding Aircraft Operations) Rules, 2015 (hereinafter referred to as “**the 2015 Notification**”) were notified on 30.09.2015 during the pendency of the Writ Petition in supersession of the 2010 Notification. The "Note" under the 2015 Notification clarified that large objects means those structures which either in isolation, or collectively subtend the azimuth angle of 0.4 degree or above at the radar antenna. The Note further specified that in a cluster of buildings wherein the gap between the two adjacent buildings subtends an azimuth angle of less than 0.4 degree on the antenna pedestal, the entire cluster is to be considered as one object.

2.6 The Writ petition bearing no. W.P.(C) 7652/2015 titled as **Shrishti Infrastructure Development Corporation Limited & others V Union of India & others** was dismissed vide order dated



25.04.2016. The petitioner filed a Letters Patent Appeal bearing LPA no. 503/2016 on 24.05.2016 before this Court challenging the order dated 25.04.2016 and prayed that the order dated 25.04.2016, the Final NOC dated 03.07.2014, Order dated 24.06.2015 and the letter dated 29.07.2015 be set aside. The petitioner during the pendency of the LPA no 503/2016 wrote a letter bearing reference no. Shristi/Hotel/AAI/17-18/785 dated 21.08.2017 to the respondent no.3 wherein it was stated that the petitioner's request for revalidation of the Final NOC had been considered under the criteria for the 2010 Notification and that since the 2015 Notification had superseded the 2010 Notification, its case be reviewed applying the criteria under the 2015 Notification. It was also explained in the letter that under the applicable criteria of the 2015 Notification, the petitioner's Tower-II qualified under the height restriction imposed therein. The respondent no.3 had agreed to re-examine the case of the petitioner according to the criteria under the 2015 Notification and the petitioner was informed vide an email dated 25.08.2017 in which top officials of the respondent no.2 were also marked.



2.7 The respondent no. 1/AAI after receipt of one RTI application dated 08.09.2017 from a third party to seek information about the “Tilt angle” for all the ASR/ARSR/MSSR installed in airfields and enroute, vide response dated 12.09.2017 confirmed that the tilt angle of the MSSR at Kolkata was 2.5 degrees and said response was also made available to the petitioner. The petitioner during the pendency of the re-examination of its case hired Aero Survey Pvt. Ltd. and obtained a site elevation and site coordinates certificate dated 16.01.2018. The petitioner wrote to the respondent no.1/AAI vide letter dated 19.01.2018 and also appealed to the respondent no.3 vide appeal dated 01.03.2018 for a review of its case under the 2015 Notification and requested for a height of 133.32 Meters AMSL for Tower-II. The petitioner again vide its letter dated 22.06.2018 requested the respondent no.1/AAI to allow the height of 133.321 Meters AMSL for Tower-II by submitting the location map of the buildings prescribing the coordinates of Tower-I and Tower-II along with the survey document from Aero Survey Private Limited.

2.8 The respondent no.1/AAI vide email dated 10.10.2018 rejected the request of the petitioner for proposed height of 133.32 meters



AMSL for Tower-II. The petitioner being aggrieved by the email dated 10.10.2018 wrote to the respondent no. 2 and again requested that its case be reconsidered and the calculation of the permissible height based on the actual tilt angle of the radar at Kolkata be calculated at 2.5 degrees and not 0.67 degrees as erroneously adopted by the respondent no.1/AAI. The petitioner also wrote a second letter dated 26.10.2018 to the respondent no.1/AAI informing about petitioner's meeting with the Secretary of the respondent no. 2 on 24.10.2018 wherein the petitioner had explained its entire case to the Secretary of the respondent no.2 and requested them to re-examine case of the petitioner and that the respondent no.2 had assured the petitioner that its case would definitely be re-examined.

2.9 The respondent no.1/AAI vide email dated 30.10.2018 informed to the petitioner that in order to examine its appeal application, a team of officials of the respondent no.1/AAI including a surveyor from CHQ would be visiting the site of Tower-I and Tower-II for a joint site verification. Accordingly, on 01.11.2018, a team led by Jt. GM (CNS) of the respondent no.1/AAI visited the site of the petitioner and surveyed the site and captured the site coordinates. A



joint verification of the coordinates noted during the site visit was issued and signed by the representatives of both the petitioner and the respondent no.1/AAI. The petitioner after the site visit conducted on 01.11.2018 availed the services of a third party independent expert i.e. Sakthi Aviation for the purposes of carrying out a Communication Navigation and Surveillance (CNS) Analysis of the heights of Tower-I and Tower-II as per the criteria contained in the 2015 Notification. The Sakthi Aviation report dated 10.12.2018, while determining that both the towers satisfied the criteria provided under the 2015 Notification and did not interfere with the air traffic control or CNS, therefore recommended a radar simulation of the site to be carried out.

2.10 The respondent no.1/AAI did not provide a copy of its analysis/report/findings about the data collected at the site visit on 01.11.2018 to the petitioner. Hence, the petitioner wrote a letter dated 23.01.2019 to the respondent no.3 requesting it to direct the respondent no.1/AAI to submit the report prepared by them after the site visit on 01.11.2018 and also requested to carry out radar stimulation study by any independent agency to ascertain the



permissible height of the Tower-II. The report of the respondent no.1 was still not given to the petitioner. The respondent no.1 responded to the petitioner's appeal and numerous representations vide email dated 08.03.2019 i.e. the impugned order by stating that Tower-II does not qualify for higher height as along with Tower-I, it becomes a large structure and accordingly restricted the height of Tower-II to the earlier top elevation granted i.e. 105.48 meters AMSL.

2.11 The petitioner being aggrieved by the impugned order dated 08.03.2019 wrote a letter dated 22.04.2019 whereby requested the respondent no.2 to allow it to conduct an independent study of its case and re-examine the same through a radar simulation study to demonstrate to the respondent no.1/AAI that its towers qualified the applicable height restrictions under the applicable 2015 Notification. The petitioner received no response to its abovementioned letter. The respondent no.1/AAI responded vide email dated 18.07.2019 to Mr.Ambrish Parekh's RTI Application seeking a list of buildings/structures in and around the Kolkata airport which form an obstruction with respect to the ASR/MSSR at Kolkata airport and confirmed that there was no recorded information with respect to the



query raised. This information had been provided to the petitioner from Mr. Ambrish Parekh. Mr. Ambrish Parekh on 07.08.2019 filed another RTI application seeking information with respect to Tower-I and Tower-II regarding *inter alia* the calculation method employed in determining height restriction; noting sheets of decisions; the method of calculating azimuth angle 0.4 degrees; and information about radars.

2.12 The petitioner during the proceedings in the LPA no 985/2013 vide CM APPL. 22134/2019 prayed before this Court to direct the respondent no.1/AAI to provide the petitioner with a copy of the Report prepared pursuant to the site visit on 01.11.2018 and to further allow it to conduct a radar simulation study. The application was dismissed vide order dated 02.07.2019 but a copy of the Report prepared by the respondent no.1/AAI post the site visit on 01.11.2018 was directed to be provided to the petitioner within a week and no directions for a radar simulation study to be carried out by an independent third party was given. The respondent no.1/AAI provided a copy of the Report to the petitioner in compliance of the order of this Court dated 02.07.2019.



2.13 The respondent no.1/AAI responded to the 2nd RTI application of Mr. Parekh dated 07.08.2019 vide response dated 02.09.2019 wherein notings were made by various senior officials of the respondent no.1/AAI based upon the coordinates and the information collected during the site visit on 01.11.2018. The file noting by Mr. Sanjeev Shah, Joint GM of the respondent no.1/AAI stated that the methodology adopted to arrive at a conclusion that the two towers formed a cluster subtending an angle of more than 0.4 degrees and therefore forming a large object, was based on “*crude method and without any mathematical solution or computer simulated modelling available at present*”. This noting was absent in the Report provided to the petitioner in compliance of the order of this Court dated 02.07.2019.

2.14 The petitioner brought the aforementioned information and the discrepancies in the Report to the knowledge of this Court during the proceedings in the LPA no 985/2013 and submitted that in light of new facts i.e. since the 2015 Notification is now applicable, the existence of two radars and the admission of the respondent no.1/AAI that a crude methodology was applied to assess its case, sought leave



of this Court to withdraw the LPA no 985/2013 with liberty to assail the impugned order in a fresh action and leave was accordingly granted vide order dated 24.09.2019. The petitioner has filed the present petition with the prayer which is produced verbatim as under:-

- (a) Issue an appropriate writ, order or direction setting aside the Impugned Order dated March 08, 2019, passed by the Respondent No. 1/Airport Authority of India;**
- (b) Issue an appropriate writ, order or direction to the Respondents restraining them from any coercive action towards Tower-I and Tower-II, specifically the demolition of Tower-II to reduce the structure from its current height of 133.32 Meters. AMSL; and**
- (c) Pass any such other order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.**

3. The respondent no. 1 filed counter-affidavit wherein stated that the height granted to the petitioner for Tower-II (up to a height of 105.48 Meters AMSL) was affirmed by the impugned order dated 08.03.2019 after a joint survey and based on the latest Notification dated 30.09.2015 being published vide G.S.R. 751 (E). The impugned order is based on a scientific method adopted by the respondent i.e. the NOCAS system which is computerized and in conformity with the principles of natural justice and equity and



cannot be said to be unreasonable and arbitrary. The respondent agreed to re-examine the petitioner's case even after a decision by the Appellate Committee and even in the process of re-evaluation, the height granted to the petitioner vide NOC dated 03.07.2014 did not qualify for a higher height. The expression "**crude analysis**" refers only to the pictorial diagram drawn manually for explanation purpose. The bare perusal of the Report dated 18.07.2019 reflects that as far as large/small angle calculation or gap angle calculations are concerned, these are accurate and without any ambiguity as they are based on bearing information obtained automatically using a scientific tool known as "**No Objection Certificate Application System**" (NOCAS). The co-ordinates provided by the petitioner were entered in the NOCAS System and thereafter based on the readings on the NOCAS System, calculations were carried out as per which Tower-I and Tower-II as a whole cluster subtends an angle more than 0.4 degree on ASR/MSSR Kolkata and MSSR Kolkata.

3.1 The multi radar as per para 2.5.2 of G.S.R. 751 (E) refers to more than one ASR (Airport Surveillance Radar). At present, Kolkata Airport is being served with only one ASR collocated with MSSR.



The other Radar at Kolkata is an MSSR being used as Air Route Surveillance Rader (ARSR) which is defined under clause 2.6.1 and 2.6 of G.S.R. 751 (E) and hence, Kolkata Airport does not qualify as Multi Radar criteria. The Delhi and Mumbai Airports only qualify as multi radar Airports.

3.2 There is no building around Tower-II except for Tower-I which forms a cluster together with Tower-II as per the Site Visit dated 01.11.2018 and the Report dated 18.07.2019. The large/small structure and gap analysis between Tower-I and Tower-II is done in accordance with the provisions of G.S.R. 751 (E) which shows that Tower-I and Tower-II together form a cluster of more than 0.4 degree and hence form a large structure. The Report of M/s Sakthi Aviation is incorrect as the site co-ordinates for calculating gap angle has been selected as per their own convenience whereas the correct method has been elaborated in the Report dated 18.07.2019. Only the designated officer as per Clause 5 is empowered to issue NOC on behalf of the Central Government in respect of civil aerodrome.

3.3 The respondent no.1/AAI issued NOC dated 19/26.07.2006 granting approval to the petitioner to construct upto a height not



exceeding 144.53 meters AMSL and the said NOC was valid for a period of three years from the date of issue. The petitioner could not complete the construction within the period of three years and applied for renewal of the NOC. The respondent no.1/AAI vide its communication dated 13.12.2010 informed the petitioner that the case of the petitioner could be considered for NOC upto a maximum height of 88.64 meters AMSL on receipt of required revised sanction plan duly authenticated and asked the petitioner to submit a revised undertaking and revised sanction plan for a restricted height of upto 88.64 meters AMSL. The petitioner appealed to the respondent no.3/Appellate Committee and the respondent no.1/AAI vide its letter dated 05.07.2012 informed the petitioner that the appeal of the petitioner will be considered by the Grievance Redressal Committee of the respondent no.2/Ministry of Civil Aviation and also asked the petitioner to apply online for NOC. The respondent no.1/AAI vide letter dated 13.06.2014 to the Regional Executive Director, Eastern Region of AAI and with copy to the petitioner authorised the Regional Executive Director, Eastern Region of AAI to issue revised height clearance to the petitioner with respect to Tower-I of 144.53



meters AMSL and with respect to Tower-II of 105.48 meters AMSL on compliance of certain other conditions by the petitioner. The petitioner again appealed to the respondent no.3/Appellate Committee. The respondent no.1/AAI in the interregnum issued NOC to the petitioner permitting the height of Tower-I upto 144.53 meters AMSL i.e. for the same height for which NOC was earlier issued on 26.07.2006 but restricted the height for Tower-II upto 105.48 meters AMSL as against the height of 144.53 meters AMSL for which NOC was issued on 26.07.2006. The respondent no.3/Appellate Committee after giving opportunity of being heard to the petitioner on 21.01.2015 and 24.06.2015 considered the appeal of the petitioner and observed as under:-

- i. The site of the petitioner lies in Outer Conical Surface and is at a distance of 6307 meters from Kolkata Airport runway;**
- ii. The petitioner had initially requested a height of 144.53 meters AMSL and against which they were granted an NOC dated 26th July, 2006 for a height of 144.53 meters AMSL with a three years validity;**
- iii. The petitioner on 27th August, 2010 i.e. after the expiry of the NOC asked for revalidation;**



iv. The provision of revalidation of NOC as per the Rules is applicable in those cases which were received for revalidation within the validity period;

v. The case of the petitioner was re-examined and NOC for the permissible height of 88.64 meters AMSL was issued;

vi. The change in height from the earlier NOC dated 26th July, 2006 was due to the revised norms which were notified in January, 2010;

vii. The matter was examined on representations / appeal of the petitioner with respect to CNS (Communication Navigation and Surveillance) criteria and it was observed that individually "both the objects (i.e. towers) are small but collectively become large object and should not be considered for higher height than permissible from ASR (Air Surveillance Radar);

viii. The respondent no.3/ Appellate Committee in meeting held on 7th March, 2014 decided that re-examination of the case from CNS criteria for Tower-2 for the requested height of 133.321 meters AMSL taking into consideration the new radar at Kolkata Airport be carried out by the respondent No.1/ AAI and issue permission for the admissible height from new radar for Tower-2 and 144.53 meters AMSL for Tower-1;

ix. The authorisation after re-examination was given vide letter dated 13.06. 2014 for the permissible height of Tower -1 of 144.53 meters AMSL and of Tower-2 for 90.30 meters AMSL from existing radar and 105.48 meters AMSL after proposed ASR is commissioned;

x. The petitioner continued to represent and cited relaxations due to second radar granted to number of structures in Mumbai;



xi. The petitioner during the hearing on 21.01 2015 had revealed that they had constructed Tower-2 beyond the permissible height of 105.48 meters AMSL after expiry of their NOC and thereafter an enquiry was ordered into, how such construction was permitted after the expiry of the validity of the earlier NOC;

xii. The request of the petitioner for application of multi radar criteria was considered but not found tenable as Kolkata has only one single ASR and that the benefits accruing from the present positioning of the existing radar had been applied in the CNS examination;

xiii. Accordingly, directions were issued for demolition of the excess height of Tower-2 as per the Aircraft Rules.

3.4 The writ petition bearing W.P.(C) no. 7652/2015 filed by the petitioner was dismissed by this Court vide judgment dated 25.04.2016 and it was held that the petitioner had no reason to go ahead with the construction beyond the height of 88.64 meters AMSL which was communicated to them by the respondent no.1/AAI vide communication dated 13.12.2010 and that the order of the respondent no.3/Appellate Committee dated 24.06.2015 is unambiguous, lucid and well-considered and does not show any need for any third party opinion. The petitioner challenged the judgment dated 25.04.2016 by way of LPA no. 503/2016 which was withdrawn on the ground that



certain fresh facts have emerged that are required to assail the impugned order dated 08.03.2019.

3.5 Section 9A of the Act empowers the Central Government to direct that no building or structure shall be constructed or erected on any land within such radius, not exceeding 20 Kilometers from the Aerodrome Reference Point, as may be specified in the Notification and/or to direct that no building or structure higher than such height as may be specified in the notification shall be constructed or erected on such land. The respondent is only concerned with the safety of Aircraft Operations and not the commercial interests of the petitioner.

3.6 The petitioner was granted initial NOC in July, 2006 as per notification bearing no. S.O.988 and NOC dated 03.07.2014 was based on notification dated 14.01.2010 bearing no. S.O. 84 (E). The impugned order dated 08.03.2019 was based on the latest notification dated 30.09.2015 i.e. GSR 751 (E). The petitioner allowed the initial NOC dated 26.07.2006 to lapse and the provision of revalidation of NOC as per Rules was applicable in those cases only which were received for revalidation within their validity period. The letter dated 13.06.2014 issued by the respondent no 1/AAI is not a NOC but an



authorization letter issued by the Corporate Headquarter of the respondent no1/AAI to direct the Regional Office at Kolkata to issue the revised NOC as per the authorization letter.

3.7 The ASR calculations for height restrictions is not based on Tilt Angle but is based on Minimum Sector Altitude (MSA) and Pedestal height of Antenna, as per para 2.5.1.1 of GSR 751 (E). Hence, the assumption of the petitioner to examine the height restrictions based on Tilt Angle is totally incorrect. The petitioner during the pendency of LPA no. 503/2016 formally requested for a review vide letter dated 01.03.2018 with respect to GSR 751 (E), Section 2.5 and sub-section 2.5.1. The petitioner was informed vide e-mail dated 07.06.2018 that the location map submitted by the petitioner did not cover the entire building, the curved portions were not fully covered within the location coordinates and therefore was requested to submit fresh location map prescribing the co-ordinates of entire Tower-I and Tower-II building. The petitioner replied vide letter dated 22.06.2018. The petitioner's case was re-examined as per its request based on GSR 751 (E) and the petitioner was duly informed of the outcome of the re-examination vide e-mail dated 10.10.2018 which



stated that under the applicable criteria of the 2015 Notification, the petitioner's Tower-II does not qualify for a higher height.

3.8 The Tilt Angle is not the criteria for height restriction from Airport Surveillance Radar. The calculations for height restrictions in case of ASR Kolkata is based on Minimum Sector Altitude (MSA) and Pedestal height of Antenna as per para 2.5.1.1 of GSR 751 (E). M/s Sakthi Aviation selected the site coordinates for calculating gap angle as per its own convenience whereas the correct method has been elaborated in the Report provided to the petitioner vide letter dated 18.07.2019 and M/s Sakthi Aviation has tried to give various reasons suiting the requirement of the petitioner whereas the case is dealt as per the provision contained in GSR 751 (E). It is also submitted that with regard to the quote given by M/s Sakthi Aviation that the gap angle calculation is not possible from space and there is no requirement to measure gap angle from space as angle calculation can be easily done mathematically based on coordinates of Radar along with co-ordinates of Tower-I and Tower-II and the "Bearing Direction" can be calculated in degree with respect to each of site co-ordinates when seen from Radar site. The co-ordinates were recorded



in the presence of the representative of the petitioner on 01.11.2018 and once the site co-ordinates are entered in the NOCAS application system, the "Bearing" information is automatically provided in the NOCAS Height Sheet from which various angles can be found and the result can be finalized.

3.9 The site elevation is the elevation of the highest point on the proposed site/plot and the site elevation of 2.75 meters AMSL as provided by the petitioner shall be the elevation of the highest point on the plot whereas site, elevation of 1.492 meters AMSL cited in the report is elevation of a random point on the plot/site. The report was based on the file of Site Survey/file noting/calculations carried out based on site survey by various sections/Departments and it was compiled for submission as a formal report. The report provided is a single report only with 04 numbers of enclosures. The report derived data from the enclosures and thus few facts may appear to be duplicate. The report is neither incomplete nor tampered with and hence, there is no misconduct on the part of the respondent.

3.10 The "**crude method**" refers to the hand drawn pictorial diagrams. The angle calculation is purely scientific and correct and



the result based on scientific procedures will always remain the same irrespective of the person handling the case. The hand drawn pictorial diagrams which are for explanatory purposes may differ and hence are termed as crude.

3.11 The petitioner in compliance to the order passed by this Court in Appeal was given a report explaining the procedure, containing the method of calculations of small/ large object along with NOCAS height sheets and pictorial representation. The petitioner has a misconception that the Multi Radar criteria is applicable at Kolkata Airport and that there is only one ASR (Airport Surveillance Radar) which is co-located with MSSR at Kolkata Airport, hence multi radar criteria as per GSR 751 (E) is not applicable. The other Radar is MSSR which is an Air Route Surveillance Radar (ARSR) and cannot be considered for Multi Radar criteria. Para 2.5 of GSR-751 (E) applies to ASR (Airport Surveillance Radar) and para 2.6 applies for ARSR.

3.12 The Officers dealing with the case of the petitioner are experts in relevant areas and are bound by the Rules, Regulations and provisions for height restrictions as are clearly mentioned in GSR



751 (E). The present case is also dealt with as per GSR 751 (E) using scientific tools and mathematical calculations. The clause 2.5.2.2 of GSR 751 (E) as quoted by M/s Sakthi Aviation is not applicable in this case as Kolkata Airport has only one Airport Surveillance Radar (ASR). The angle calculations are based on scientific methods and hence the results arrived at are accurate. The petitioner vide e-mail dated 08.03.2019 was communicated the decision of the respondent after a joint survey and detailed consideration of the petitioner's case along with documents relied upon and hence does not require any detailed reasoning being technical in nature. The Kolkata Airport does not qualify as a multi radar airport as it has only one ASR/MSSR being used as ASR and one MSSR, being used as ARSR and hence, the 2015 Notification has rightly been applied in the case of the petitioner. It was prayed that the petition be dismissed.

4. The petitioner filed a rejoinder to the counter affidavit filed in response to petition wherein reiterated the facts stated in the petition and denied the averments made by the respondent no.1 in its counter affidavit. It was prayed that the petitioner be granted relief as prayed for.



5. Mr. Jayant Mehta, learned Senior Counsel advanced oral arguments on behalf of the petitioner and written submissions are also filed on behalf of the petitioner. Sh. Mehta narrated the factual position that the petitioner is seeking to set aside and/or quash the impugned order dated 08.03.2019 passed by the respondent no.1/AAI whereby the respondent no.1/AAI had restricted the maximum permissible height of Tower-II of the site complex of the petitioner to 105.58 meters as per No Objection Certificate dated 03.07.2014 from the originally granted height of 144.53 Meters AMSL granted under No-Objection Certificate dated 26.07.2006. Sh. Mehta further stated that the petitioner had constructed a complex comprising of Tower-I and Tower-II at Mouza Jatragachi, AA-II/CBD/2, Action Area-II, New Town, Rajarhat (West Bengal), District North 24, Parganas, State of West Bengal which is situated at a distance of 7.06 Kilometres from NSCB International Airport, Kolkata. The complex comprises of two Towers, i.e. Tower-I which includes commercial and rental units and Tower-II which is a building of serviced apartments. The petitioner had sought permission for height clearance from the respondent no.1/AAI vide application dated 13.02.2006



under Section 9A of the Act 1934 for the construction of Tower-I and Tower-II of the site complex. The respondent no.1/AAI had on 26.07.2006 issued a NOC dated 26.07.2006 which was valid for a period of three years and approved height of 144.53 Meters AMSL for Tower-I and Tower-II of the site complex. The petitioner had made investments on the basis of the approved plans under the original NOC dated 26.07.2006. The petitioner had applied for revalidation of First NOC on 27.08.2010 but the respondent no.1/AAI vide letters dated 13.12.2010 and 03.07.2014 had approved the height of the Tower-I up to 144.53 Meters AMSL and approved the height of Tower-II up to 90.30 Meters AMSL from the existing radar. The height of Tower-II was to be increased up to only 105.48 Meters AMSL after proposed ASR had been commissioned. The petitioner has filed a Writ Petition bearing no. 7652/2015 to challenge the order dated 24.06.2015, NOC dated 03.07.2014 and Letter dated 29.07.2015 issued by the respondent no.1/AAI which was dismissed vide order dated 25.04.2016 passed by the learned Single Judge of this Court. The petitioner filed appeal vide LPA no. 503/2016 which was allowed to be dismissed as withdrawn vide the



order dated 24.09.2019 without expressing any view on the merits or the pleas taken by the appellants i.e. the petitioner.

5.1 The respondent no.2/the Ministry of Civil Aviation during the pendency of the Writ Petition on 30.09.2015 again notified new General Statutory Rules (G.S.R.) No. 751 (E), 2015 on height restrictions for safeguarding of aircraft operations under the applicable provisions of the Act. The petitioner vide letter dated 21.08.2017 approached the respondent no.1/AAI to consider its case for revalidation under the 2015 Notification which was issued in supersession of the 2010 Notification. The respondent no.3 agreed to re-examine the case of the petitioner as per the criteria under the 2015 Notification. The respondent no.3 vide letter dated 25.08.2017 informed the petitioner that the respondent no.3 had decided to re-evaluate and re-examine the case of the petitioner as per the criteria under the 2015 Notification. The respondent no.1 despite multiple rounds of representations and requests made by the petitioner had vide impugned Order dated 08.03.2019 restricted the maximum permissible height of Tower-II of site complex of the petitioner to 105.58 meters as per No Objection Certificate dated 03.07.2014.



5.2 Sh. Mehta assailed validity of the impugned order dated 08.03.2019 by arguing that the respondent no.1/AAI has failed to provide any reason while passing the impugned order dated 08.03.2019 which is discriminatory and arbitrary. The impugned order dated 08.03.2019 issued by the respondent no.1/AAI did not give any reason in its support. Sh. Mehta referred the impugned order dated 08.03.2019 which simply stated that **"On examination, it was concluded that the Tower-II does not qualify for higher height, as along with Tower-I it becomes a large structure"**. The respondent no.1/AAI being a public authority was legally bound to record valid and cogent reasons explaining the decision arrived at in the impugned order dated 08.03.2019 and Sh. Mehta referred **Kranti Associates Pvt. Ltd & another V Masood Ahmed Khan & others**, (2010) 9 SCC 496 and **Punjab State Electricity Board & others V Jit Singh**, (2009) 13 SCC 118. He also argued that the exercise of discretion in discharge of statutory duties must involve application of mind and must consider all the matter that are required for consideration and the decision by the statutory authority must be non-arbitrary and due consideration be given to the reasonable or



legitimate expectation of the person affected by the decision and **Rameshwar Prasad and others V Union of India**, AIR 2006 SC 980 and **Food Corporation of India V Kamdhenu Cattle Feed Industries**, (1993) 1 SCC 71 were referred.

5.3 Sh. Mehta further argued that the examination of case of the petitioner for height restriction vide the impugned order dated 08.03.2019 was based on “crude method” and without any mathematical solution or computer simulated modelling. The respondent no.1/AAI has concealed file noting which reflected use of “crude method without any mathematical solution or computer simulated modelling”. He stated that Site Visit Report prepared by the respondent no.1/AAI contained a file noting which reflects that methodology adopted to arrive at a conclusion that the two towers formed a cluster subtending an angle of more than 0.4 degrees and therefore forming a large object was based on "crude method and without any mathematical solution or computer simulated modelling". The respondent no 1 made available complete Site Visit Report including file noting to the petitioner in response to RTI Application 02.09.2019. The specific noting from Mr. Sanjeev Shah,



Joint GM of the respondent no.1/AAI was missing in the Site Visit Report shared by the respondent no.1/AAI pursuant to order dated 02.07.2019 passed by this Court and the said file noting culminated in the impugned order dated 08.03.2019. The respondent no.1/AAI being a statutory authority was bound to make a complete and fair disclosure of facts and reliance was placed on **Sarvjit Singh V NDMC & others**, ILR (2008) II Delhi 212. Sh. Mehta also countered the argument advanced by Sh. Digvijay Rai, the learned counsel for the respondent no.1/AAI that the expression "crude analysis" refers only to the pictorial diagram drawn manually for explanation purpose as the same is not drawn to scale. Sh. Mehta further argued that Site Visit Report of the respondent no.1/AAI itself notes that the Tower-II when assessed in isolation is classified as a 'small structure' and admittedly is not "Large object" as defined in Clause 2.5.1.1 of the 2015 Notification as the angle formed by the Tower-II when seen from the ASR/MSSR radar is 0.25 Degree and the angle formed by the Tower-II when seen from MSSR (ARSR) is 0.19 degree which is less than 0.4 Degree. Sh. Mehta after relying on file noting empathetically argued that it is evident from the contents of the file



noting that the calculation of Gap Angle analysis i.e. determination of whether two structures subtend an azimuth angle of less than 0.4 degrees was undertaken via "crude method without mathematical solution or computer simulated modelling". Sh. Mehta further highlighted that the respondent no.1/AAI has wrongly assessed the permissible height without considering the tilt angle which has been obtained by the petitioner in RTI reply dated 12.09.2017 and the respondent no.1/AAI in counter affidavit stated that ASR calculations for height restriction are not based on Tilt Angle. The calibrated tilt angle of the Badu Radar as per the calculation sheet of the respondent no. 1 was 3.00 degree because NOCAS was not updated as on date to determine the gap angle. Sh. Mehta in light of these submissions argued that the observations made by the respondent no.1/AAI in impugned order dated 08.03.2019 that the two Towers form a cluster was not undertaken in accordance with any scientific or mathematical process rather the impugned order dated 08.03.2019 has admittedly relied upon "crude method with any mathematical solution" to reject the request of the petitioner for permissible height.



5.4 Sh. Mehta also argued that the respondent no.1/AAI has wrongly stated that gap between Tower-I and Tower-II was calculated by NOCAS application and during argument it was wrongly stated that the calculation of the permissible height was carried out based on NOCAS system. The respondent no.1/AAI in a tender dated 28.10.2020 admitted that the facility to calculate the angle between two structures for examination of small/large/cluster forming purpose is not available in NOCAS system and when applicant applies for two or more structures within his plot then Gap Angle Analysis is done manually. Sh. Mehta referred Report dated 10.12.2018 prepared by Sakthi Aviation, a third-Party Independent expert in aviation wherein highlighted that there was no measurement technique or application available to measure the gap between towers from space with respect to radar. Sakthi Aviation Report after considering different combination of coordinates found that the gap between Tower-I and Tower-II is more than 0.4 degree and building width facing ASR/MSSR is 0.3595 and 0.2525 respectively and concluded that Tower-I and Tower-II did not form a cluster as per Clause 2.5.2.2 sub clause IV of the 2015 Notification. Sh. Mehta ultimately



argued that observations made by the respondent no.1/AAI in the impugned order dated 08.03.2019 that two towers form a cluster was not undertaken in accordance with any scientific or mathematical process rather the impugned order dated 08.03.2019 has relied upon "crude method without any mathematical solution" to reject request of the petitioner for permissible height.

5.5 Sh. Mehta also argued that the case of the petitioner must be assessed by criterion of multi-radar. Sh. Mehta after referring Site Visit Report stated that it is evident from Report that there were more than one radar at Kolkata airport at the time of assessing the height of Tower-I and Tower-II on 01.11.2018. The second radar is installed at Badu and Kolkata Airport is responsible to safeguard the radar installed at Badu and second radar installed at Badu is "MSSR" radar which can operate as ASR and/or ARSR based on operational usage. Accordingly, the case of the petitioner be assessed on the basis of the 2015 Notification criteria with the confirmed presence of two radars. The petitioner is entitled to the benefits of Multiple Radar Criterion as provided for in Clause 2.5.2 of the 2015 Notification. Sh. Mehta concluded by stating that the petitioner is committed to safety and



security of air-traffic arising to and from Kolkata Airport and the petitioner is merely seeking relief against the arbitrary impugned order dated 08.03.2019 passed by the respondent no. 1. The petitioner is also ready to participate in the cost of the installation of any more additional radar/equipment at Kolkata Airport which may be required apart from the two radars existing. It is argued that the present petition be allowed.

6. Sh. Digvijay Rai, the learned counsel for the respondent no.1/AAI advanced oral arguments and written submissions were also submitted on behalf of the respondent no.1/AAI. Sh. Rai stated that this Court cannot sit as an appellate court against the decision taken by an expert body due to lack of technical expertise and decision be left for decision of those who are qualified to address the issues. The petitioner is seeking to set aside the impugned order dated 08.03.2019 passed by the respondent no.1/AAI whereby the petitioner was intimated Tower-II constructed by the petitioner does not qualify for higher height as it with Tower-1 forms a large object. The respondent no.1/AAI issued NOC dated 19/26.07.2006 to the petitioner whereby granting no objection to construct a Tower upto a



height not exceeding 144.53 meters AMSL which was valid for three years as per the prevalent rules. It was provided that if the construction is not completed within the stipulated time then fresh NOC would have to be taken by the petitioner. The petitioner commenced construction after November, 2008 and was not completed within three years. The petitioner on 27.08.2010 applied to the respondent no.1/AAI for revalidation /renewal of the NOC but the respondent no.1 vide communication dated 13.12.2010 informed the petitioner that the petitioner is only entitled upto maximum height of 88.64 meters AMSL for Tower-II on receipt Sanction Plan. The petitioner preferred an appeal to the respondent no.3. The respondent no.1/AAI during pendency of Appeal vide letter dated 05.07.2012 informed the petitioner that its Appeal would be considered by the Grievance Redressal Committee of the respondent no.2 and the petitioner asked to apply online for NOC. The respondent no.1/AAI vide letter dated 13.06.2014 addressed to the RED, Eastern Region authorised the said officer to issue revised height clearance to the petitioner with respect to Tower-I for 144.53 meters and with respect to Tower-II for 105.48 meters AMSL on



compliance of certain conditions by the petitioner. The Petitioner again appealed to respondent no.3 and the respondent no 1 in the interregnum on 03.07.2014 issued NOC for Tower-1 upto 144.53 meters AMSL i.e. for the same height for which NOC was earlier issued 26.07.2006 but the height of 105.48 meters was given in NOC for Tower-II subject to operation of new radar. The respondent no 3 after hearing the petitioner observed in the meeting held on 24.06.2015 that the matter was examined with respect to CNS (Communication Navigation and Surveillance) criteria and individually **“both the object (i.e. towers) are small but collectively become large object and should not be considered for higher height than permissible from ASR (Air Surveillance Radar)”**. The petitioner had also revealed that the Tower-II has been constructed beyond the permissible height of 105.48 meters for which an enquiry was ordered. The request of the petitioner for application of multi radar criteria was considered but was not found tenable as Kolkata only has one single ASR Radar and accordingly directions were issued for demolition of the excess height of the Tower-II as per the Aircraft Rules.



6.1 Sh. Rai further stated that the petitioner filed a W.P.(C) no. 7652/2015 which was dismissed vide judgment dated 25.04.2016 passed by this Court by observing that there was no arbitrariness in any action taken by the respondent no.1/AAI and the NOC admittedly was not forever and it was further observed that a fresh NOC would have to be obtained after expiry of validity. The Hon'ble Court further held that the case of the petitioner was considered fairly and permissible height was granted to the petitioner. The petitioner filed LPA bearing no.503/2016 which was withdrawn on the ground that additional information came in knowledge of the petitioner and as such findings of the learned Single Judge vide judgment dated 25.04.2016 remain conclusive. The respondent no.1/AAI is only concerned with the safety of Aircraft Operations and not the commercial interests of the petitioner and the initial NOC granted to the petitioner in July, 2006 was as per notification bearing no. S.O.988 and the NOC dated 03.07.2014 was based on notification dated 14.01.2010 bearing no. S.O.84 (E).

6.2 Sh. Rai further stated and argued that the petitioner has challenged the impugned order dated 08.03.2019 on basis of



notification dated 30.09.2015 i.e. GSR 751 (E). It is further stated that both S.O. 84(E) and GSR 751 (E) contained a stipulation regarding “Large object” i.e. the structure/s in isolation or collectively subtending azimuth angle of 0.4 degree or above at Radar antenna. The entire cluster should be considered as one object in case of cluster of buildings wherein the gap between the two adjacent buildings subtends an azimuth angle of less than 0.4 degree on the antenna pedestal and Tilt Angle is not the criteria for height restriction from Airport Surveillance Radar. Sh. Rai also stated that in case of ASR Kolkata, calculation for height restrictions is based on Minimum Sector Altitude (MSA) and Pedestal height of Antenna as per para 2.5.1.1 of GSR 751 (E) and as such no benefit can be granted to the petitioner and the height of 105.48 meters is final and beyond which no construction is permissible.

6.3 Sh. Rai further referred Sakhti Aviation Report relied on by the petitioner and argued that said Report is also incorrect as M/s. Sakhti selected the site co-ordinates for calculating gap angle as per its own convenience, whereas the correct method has been elaborated in the Report provided to the petitioner vide letter dated 18.07.2019 and



M/s Sakhti failed to consider the case as per GSR 751 (E). M/s Sakhti Aviation in report stated that gap angle calculation is not possible from space but there is no need to measure gap angle from space as angle calculation can be easily done mathematically based on coordinates of Radar along with the co-ordinates of Tower-I and Tower-II. It was further highlighted that once the site co-ordinates are entered in the NOCAS application system, the “Bearing” information is automatically provided in the NOCAS Height Sheet and report of Sakhti Aviation is not binding on the respondent no.1/AAI as per the existing rules.

6.4 Sh. Rai further argued that the petitioner strongly relies upon the site visit report and the internal noting of the respondent no.1/AAI. Sh. Rai stated that the petitioner had changed the site co-ordinate data multiple times which made it necessary for the respondent no.1/AAI to physically verify the site and obtain actual site co-ordinate of the buildings i.e. Tower-I and Tower-II and accordingly a team of officials of the AAI including a Surveyor visited the site in the presence of the representative of the petitioner on 01.11.2018. There is only one ASR (Airport Surveillance Radar) at Kolkata Airport and



as such multi radar criteria as per GSR 751 (E) is not applicable as another radar is MSSR which is an Air Route Surveillance Radar (ARSR) and cannot be considered for multi radar criteria. The Final Report was prepared and was supplied to the petitioner. The Report was based on the Site Survey/file noting/calculations carried out based on site survey by the officials of respondent no.1/AAI. Sh. Rai also countered the contention of the petitioner that the respondent no.1/AAI has applied rudimentary or unscientific methods which was crude and argued that the calculation method to arrive at structure angle individually or the gap angle between the two buildings was purely scientific and accurate. Sh. Rai categorically stated that the crude method mentioned in the file noting refers only to the pictorial depiction which was drawn just for explanation purpose that how the angle calculation is arrived at and the pictorial representation is crude as it is not drawn to the scale and the drawn angles and sizes of the buildings will not be able to represent the actual ones and Tower-I and Tower-II are indicated as spots in two dimensional representations for easy understanding. The angle calculation is based on “Bearing” information of the site coordinates when seen from the



Radar and the said information is calculated automatically by NOCAS ARC, GIS software of ESRI which is elaborated in the Report dated 18.07.2019.

6.5 Sh. Rai also countered the reliance of the petitioner on the noting of the officer of the respondent no.1/AAI wherein said officer has referred the methodology to be crude and stated that said officer in conclusion of note mentioned that **"Cluster of both towers subtends angle of more than 0.4 degrees and hence become Large Structure."** The noting in the official files is essentially an internal matter of the Government and does not have any legal sanctity unless approved by the Competent Authority and communicated to the concerned person and reliance was placed on **Pimpri Chinchwad New Township Development Authority V Vishnudev Coop. Housing Society**, (2018) 8 SCC 215. Sh. Rai argued that the present petition be dismissed.

7. The petitioner in present petition has sought for quashing of impugned order dated 08.03.2019 passed by the respondent no.1/AAI. It is reflecting that the respondent no.1/AAI had restricted the maximum permissible height of Tower-II to 105.58 meters



ASML in terms of No Objection Certificate dated 03.07.2014 in contrast to height of 144.53 Meters AMSL which was granted in terms of No-Objection Certificate dated 26.07.2006 which was valid for a period of three years. The site of the petitioner pertaining to Tower-II is situated at a distance of 7.06 Kilometres from NSCB International Airport, Kolkata. The petitioner could not conclude construction within stipulated time and applied for revalidation of First NOC on 27.08.2010 but the respondent no 1 vide letters dated 13.12.2010 and 03.07.2014 had approved height of Tower-II up to 90.30 Meters AMSL from the existing radar. The respondent no 1 has increased height of Tower-II up to 105.48 Meters AMSL after proposed ASR had been commissioned. The petitioner filed a Writ Petition bearing no. 7652/2015 to challenge the order dated 24.06.2015, NOC dated 03.07.2014 and Letter dated 29.07.2015 issued by respondent no 1 and said petition was dismissed vide order dated 25.04.2016. The petitioner filed appeal vide LPA no. 503/2016 which was allowed to be dismissed as withdrawn vide the order dated 24.09.2019 but without expressing any view on the merits or the pleas taken by the appellants i.e. the petitioner. The respondent no.2



on 30.09.2015 again notified new General Statutory Rules (G.S.R.) No. 751 (E), 2015 on height restrictions for safeguarding of aircraft operations. The petitioner again approached the respondent no.1 vide letter dated 21.08.2017 to consider its case for revalidation under 2015 Notification. The respondent no.1/AAI vide impugned Order dated 08.03.2019 restricted the maximum permissible height of Tower-II to 105.58 meters ASML as per No Objection Certificate dated 03.07.2014.

8. Sh. Jayant Mehta, the learned Senior Counsel for the petitioner strongly and primarily argued that the case of the petitioner for height restriction imposed vide the impugned order dated 08.03.2019 was examined on basis of “crude method” and without resorting to any mathematical solution or computer simulated modelling and file noting in Site Inspection Report of the respondent no.1/AAI also reflected use of “crude method without any mathematical solution or computer simulated modelling” to arrive at a conclusion that the two towers formed a cluster subtending an angle of more than 0.4 degrees and as such forming a large object. Sh. Mehta after referring Site Visit Report argued that Report itself notes that the Tower-II if



assessed in isolation is classified as a 'small structure' and is not "Large object" as defined in Clause 2.5.1.1 of the 2015 Notification as the angle formed by the Tower-II when seen from the ASR/MSSR radar is 0.25 Degree and the angle formed by the Tower-II when seen from MSSR (ARSR) is 0.19 degree which is less than 0.4 Degree. Sh. Mehta further highlighted that the respondent no.1/AAI has wrongly assessed the permissible height without considering the tilt angle.

8.1 Sh. Rai, the learned counsel for the respondent no.1/AAI countered arguments advanced by Sh. Mehta on behalf of the petitioner and argued that S.O. 84(E) and GSR 751 (E) contained a stipulation regarding "Large object" i.e. the structure/s in isolation or collectively subtending azimuth angle of 0.4 degree or above at Radar antenna and entire cluster should be considered as one object in case of cluster of buildings wherein the gap between the two adjacent buildings subtends an azimuth angle of less than 0.4 degree on the antenna pedestal and Tilt Angle is not the criteria for height restriction from Airport Surveillance Radar and the height of 105.48 meters ASML in respect of Tower-II is final. Sh. Rai further strongly



argued that once the site co-ordinates are entered in the NOCAS application system, the “Bearing” information is automatically provided in the NOCAS Height Sheet. The Kolkata Airport is not considered for multi radar criteria. Sh. Rai strongly argued that the calculation method used to arrive at structure angle individually or the gap angle between the two buildings was purely scientific and accurate and the crude method mentioned in the file noting refers only to the pictorial depiction which was drawn just for explanation purpose and not drawn to the scale. Sh. Rai also stated that office of the respondent no.1/AAI in conclusion of note mentioned that **"Cluster of both towers subtends angle of more than 0.4 degrees and hence become Large Structure."**

8.2 The perusal of Site Inspection Report reflects that a team duly constituted by the competent authority visited site on 01.11.2018 to verify and record coordinates of the structures. In respect of the Tower-II, it was concluded that angle is less than 0.4 degree, hence Tower-II is a small structure in isolation. The Tower-I and Tower-II were treated as cluster as gap was found to be less than 0.4 degree on gap analysis between Tower-I and Tower-II. The angle analysis for



Tower-II based on NOCAS sheet was also done. It was noticed that since the angle was less than 0.4, Tower-II was a structure in isolation. It was concluded at end on basis of calculation that the Tower-II along with Tower-I forms a large structure when seen from ASR/MSSR Kolkata and accordingly, higher height as claimed by the petitioner was not granted and permissible top elevation remained at 104.57 meters ASML for Tower-II. It is reflecting that angle analysis in respect of Tower-I and Tower-II was done based on NOCAS Sheet which is a scientific method. There is no force in argument advanced by Sh. Jayant Mehta, the learned Senior Counsel for the petitioner that height restriction vide impugned order dated 08.03.2019 was examined on basis of “crude method” and without resorting to any mathematical solution or computer simulated modelling. Even if file noting in Site Inspection Report contained reflected use of “crude method without any mathematical solution or computer simulated modelling”, it does not provide much help to the petitioner. More over this Court cannot sit as an appellate court over the decision is taken by an expert body due to lack of technical expertise as rightly argued by the counsel for the respondent no.1.



9. Sh. Mehta also referred Report dated 10.12.2018 prepared by Sakhti Aviation wherein highlighted that there was no measurement technique or application available to measure the gap between towers from space with respect to radar and found that the gap between Tower-I and Tower-II is more than 0.4 degree and concluded that Tower-I and Tower-II did not form a cluster as per Clause 2.5.2.2 sub clause IV of the 2015 Notification. Sh. Rai argued that Sakhti Aviation Report is incorrect as M/s. Sakhti selected the site co-ordinates for calculating gap angle as per its own convenience and report of Sakhti Aviation is not binding on the respondent no.1/AAI as per the existing rules. There is force in arguments advanced by Sh. Rai as Report given by M/s Sakhti Aviation is without any legal sanctity.

10. Sh. Mehta after referring Site Visit Report also stated that there was more than one radar at Kolkata airport at the time of assessing the height of Tower-I and Tower-II on 01.11.2018 and the case of the petitioner must be assessed by criterion of multi-radar and due to this reason, the case of the petitioner be assessed on the basis of the 2015 Notification. Sh. Rai stated that Kolkata only has one single ASR



Radar and as such multi radar criteria as per GSR 751 (E) is not applicable as another radar is MSSR which is an Air Route Surveillance Radar (ARSR) and cannot be considered for multi radar criteria. There is no material on record to show that Kolkata Airport is having more than one radar. The argument so advanced by Sh. Mehta is misconceived and misplaced.

11. Sh. Mehta also attacked the impugned order dated 08.03.2019 by arguing that the respondent no.1/AAI being a public authority was bound to record valid and cogent reasons explaining the decision arrived at vide impugned order dated 08.03.2019 but the respondent no.1/AAI has failed to provide any reason while passing the impugned order dated 08.03.2019. The impugned order dated 08.03.2019 reads as under:-

Sir,

Please refer your Building project case located at Plot No.AAII/CBD/2 ,New Town, Kolkata, West Bengal.

On examination, it was concluded that the Tower-II does not qualify for higher height, as along with Tower-I, it becomes a large structure.

Therefore, Tower-II is restricted to the earlier Top Elevation granted by AAI.



11.1 The principles of natural justice involve a procedural requirement of fairness and have become an essential part of any system of administrative justice. Natural Justice is considered to be part of rule of law. The Supreme Court in **Sangram Singh V Election Tribunal Kotah**, AIR 1955 SC 425 observed that one should not be condemned unheard and decision should not be reached behind the back. The Supreme Court in **Maneka Gandhi V Union of India**, AIR 1978 SC 597 emphasized that natural justice is an essential element of procedure established by law and state action must be right, just and fair and not arbitrary, fanciful and oppressive. It was held that Article 14 of the Constitution strikes at arbitrariness of state action and ensures fairness and equality of treatment.

11.2 The Supreme Court in **Indian Oil Corporation Limited and others V Shashi Prabha Shukla and another**, (2018) 12 SCC 85 observed as under:-

33. (a) public authority in its dealings has to be fair, objective, non arbitrary, transparent and non discriminatory. The discretion vested in such an authority, which is a concomitant of its power is coupled with duty and can never be unregulated or unbridled. Any decision or action contrary to these functional precepts would be at the pain of invalidation thereof. The State and its instrumentalities, be it a public authority, either as an



individual or a collective has to essentially abide by this inalienable and non negotiable prescriptions and cannot act in breach of the trust reposed by the polity and on extraneous considerations. In exercise of uncontrolled discretion and power, it cannot resort to any act to fritter, squander and emasculate any public property, be it by way of State largesse or contracts, etc. Such outrages would clearly be unconstitutional and extinctive of the rule of law which forms the bedrock of the constitutional order.

11.3 The Supreme Court in Southern Power Distribution Company Limited of Andhra Pradesh (APSPDCL) & another V M/s Hinduja National Power Corporation Limited & Another, 2022 Livelaw (SC) 117 and also cited on behalf of the petitioner observed as under:-

Every action of a State is required to be guided by the touchstone of non arbitrariness, reasonableness and rationality. Every action of a State is equally required to be guided by public interest. Every holder of a public office is a trustee, whose highest duty is to the people of the country. The Public Authority is therefore required to exercise the powers only for the public good.

11.4 The principles of natural justice are equally applied in purely administrative functions. The Supreme Court in **A.K. Kraipak V Union of India**, AIR 1970 SC 150 observed that the principles of natural justice are applicable to administrative inquiries and established that observance of principles of natural justice in decision



making process of the administrative body having civil consequences.

11.5 The purpose of the principles of natural justice is to prevent miscarriage of justice. The expression *audi alteram partem* implies that a person must be given an opportunity to defend himself and ensures that no one should be condemned unheard. The administrative authority is also required to afford reasonable opportunity to the party to present his case. A real, rationale and effective hearing includes disclosure of all relevant material or information which the authority wishes to use against the individual in arriving of its decision. The administrative authority cannot take a decision on the basis of any material unless the person against whom it is sought to be utilized is given an opportunity to rebut or explain the same.

11.6 The Supreme Court in **Engineer and Manufacturing Co. V Union of India**, AIR 1976 SC 1785 reiterated the principle with an emphasis that the rule requiring reasons to be given in support of an order is a basic principle of natural justice, which must inform the quasi-judicial process. It should be observed in its proper spirit and



"mere pretence of compliance with it would not satisfy the requirement of law". It was observed in **Maneka Gandhi V Union of India**, AIR 1990 SC 1984 that giving of reasons is a healthy check against abuse or misuse of power. The requirement of duty to give reasons was further crystallized in **S.N. Mukherjee V Union of India**, AIR 1990 SC 1984 and reasons due to which a reasoned decision must be passed were discussed. It was observed that reasoned decision: (i) guarantee consideration by the authority; (ii) introduce clarity in decisions; and (iii) minimize chances of arbitrariness in decision-making thereby ensuring fairness in the process. It was observed as under:

In our opinion, therefore, the requirement that reason must be recorded must be recorded should govern the decisions of govern the an administrative authority exercising quasi judicial functions irrespective of fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clean and explicit so as to indicate that the authority has given due consideration to the points in controversy.

11.7 The Supreme Court in Rani Lakshmi Bai Kshetriya Gramin Bank V Jagdish Sharan Varshney & others, (2009) 4 SCC 496



held that the purpose of disclosure of reasons is that people should have confidence in judicial and quasi-judicial authorities and minimize chances of arbitrariness. It was held as under:-

The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N. Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

11.8 The Supreme Court in the case of Namit Sharma V Union of India, (2013) (1) SCC 745 regarding duty to give reasons held as under:-

It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required



to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr. [(1976) 2 SCC 981]; and Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers [(2010) 4 SCC 785].

12. The perusal of impugned order dated 08.03.2019 passed by the respondent no.1/AAI reflects that it was issued without properly appreciating the material and without assigning any reason and is in violation of the Principles of Natural Justice. The respondent no.1/AAI being a statutory authority in discharge of its duties was legally bound to record valid and cogent reasons explaining the decision arrived at in the impugned order dated 08.03.2009 but it was passed without giving reasons for its decision. The decision by the statutory authority must be non-arbitrary and be supported by sufficient reason. The impugned order dated 08.03.2019 is cryptic, mechanical and is passed without application of mind. The impugned order dated 08.03.2019 is passed without giving reasons and is accordingly set aside. However, the respondent no.1 shall be at liberty to initiate appropriate action in accordance with law.



13. The present petition is accordingly allowed. The pending application, if any, also stands disposed of.

DR. SUDHIR KUMAR JAIN
(JUDGE)

OCTOBER 15, 2024

N/AK

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 16.10.2024
16:21:23