



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 646 OF 2024**

SALGAOCAR MINING INDUSTRIES PVT. LTD.,

a Company incorporated under the

Companies Act, 1956, (Companies

Act 2013) having its registered office

at Salgaocar Bhavan, Altinho, Panaji- Goa,

and represented herein by its

Authorised Representative,

Mr. Jayant Gaunker, son of late

Krishanath Gaunker, 61 years of age,

with office at Salgaocar Bhavan,

Altinho, Panaji - Goa.

... PETITIONER

VERSUS

1. STATE OF GOA,

through its Chief Secretary,

having office at Secretariat,

Porvorim – Goa.

2. THE DIRECTOR OF TOURISM,

Government of Goa, 2nd Floor,

Paryatan Bhavan, Patto, Panaji -

Goa.

3. THE SECRETARY (TOURISM),

Government of Goa, Secretariat,

Porvorim, Goa.

.... RESPONDENTS

Mr. Yogesh Nadkarni, Ms. Simran Khadilkar, Ms. Maria Carmita D'Costa Mashelkar and Ms. Sonam Dessai, Advocates for the Petitioner.

Mr. Deep Shirodkar, Additional Government Advocate for the Respondents.

**CORAM:- A. S. CHANDURKAR &
NIVEDITA P. MEHTA, JJ.**

DATED :- 20th March, 2025

ORAL JUDGMENT (Per A. S. Chandurkar, J.)

1. Rule. Rule is made returnable forthwith.
2. The issue that is raised in this Writ Petition filed under Articles 226 and 227 of the Constitution of India is whether the principles of natural justice are required to be complied with prior to directing recovery of the amount of expenses and costs incurred by the competent authority in removing any nuisance under Section 8 of the Goa Tourist Places (Protection and Maintenance) Act, 2001 (for short “the Act of 2001”).

3. The facts relevant for considering the issue as raised are that a Merchant Vessel, M. V. River Princess owned by the petitioner was declared as a nuisance on 19/07/2003 under the Act of 2001. On 30/03/2009, it was also declared as a State Disaster by the State Disaster Management Authority. Since the Government of Goa through its Department of Tourism incurred expenses in removing the nuisance, an order dated 15/07/2019 came to be passed by the Competent Authority and Director of Tourism under Section 8 of the Act of 2001. An amount of Rs.166,41,10,636/- (Rupees One Hundred Sixty-Six Crores Forty-One Lakhs Ten Thousand Six Hundred and Thirty Six only) was determined as the amount spent towards expenses in removing the said nuisance. The break up of these expenses was indicated in annexure 'A' to the said order.

4. The Petitioner being aggrieved by the aforesaid order preferred an appeal under Section 11 of the Act of 2001 before the Appellate Authority-Secretary of Tourism. One of the grounds raised by the Petitioner was that the amount of expenses determined under Section 8 of the Act of 2001 was without granting any opportunity to the petitioner. The Appellate Authority, however, declined to interfere with the original order and dismissed

the appeal on 28/06/2024. Being aggrieved, the petitioner has preferred the present writ petition raising challenge to both these orders.

5. Shri Yogesh Nadkarni, learned counsel for the petitioner submitted that the initial order dated 15/07/2019 passed by the Competent Authority was liable to be set aside on the ground that it was passed in breach of principles of natural justice. Without granting any opportunity whatsoever to the petitioner to contest the amount of expenses sought to be recovered from it, the impugned order had been passed. According to him, since the order dated 15/07/2019 resulted in civil consequences qua the petitioner, it was necessary for the Competent Authority to have first complied with the principles of natural justice and thereafter directed the recovery of the amount of expenses and costs from it. Though this ground was raised before the Appellate Authority, the same was turned down by observing that the principles of natural justice stood excluded from the purview of Section 8 of the Act of 2001. In this regard, the learned counsel placed reliance on the decisions in: *(a) Manohar V/s State of Maharashtra, (2012) 13 SC 14; (b) Dharampal V/s Deputy Commissioner, (2015) 8 SCC 519;*

(c) S. K. Bhargava V/s Collector, (1998) 5 SCC 170; (d) Automotive Tyre Manufacturer's Association V/s Designated Authority, (2011) 2 SCC 258; and (e) State Bank of India V/s Rajesh Agarwal, (2023) 6 SCC 1.

It was thus submitted that as the original order had been passed in breach of principles of natural justice, it was liable to be set aside. Consequently, the appellate order was also liable to be quashed and set aside. It was thus prayed that the reliefs prayed for be granted.

6. Shri Deep Shirodkar, learned Additional Government Advocate opposed the writ petition and supported the impugned orders. According to him, since the petitioner was responsible for the cause of nuisance, the amount of expenses and costs incurred by the Government was liable to be recovered from it. According to him, the Competent Authority took into consideration the actual amount of expenses and costs incurred for removing such nuisance and the same was therefore sought to be recovered from the petitioner. Since all the amounts sought to be recovered were duly accounted for, no prejudice was caused to the petitioner by passing the impugned order without giving the petitioner any opportunity. It was further pointed out that considering the fact that recovery of

public funds was intended, no discretion be exercised in favour of the petitioner. The recovery as arrears of land revenue would be undertaken in the manner prescribed. He referred to the affidavit in reply as filed and submitted that the writ petition was liable to be dismissed.

7. We have heard the learned counsel for the parties and with their assistance we have perused the documents on record. It is an admitted fact that the original order dated 15/07/2019 was passed by the Competent Authority without granting any opportunity to the petitioner. The question to be considered, therefore, is whether the requirement of complying with the principles of natural justice stands impliedly excluded under of Section 8 of the Act of 2001. Under the Act of 2001, if any nuisance as defined under Section 2(c) is caused, the same is liable to be removed at the instance of the Competent Authority. After such removal, the object of nuisance stands forfeited and vests in the Government so as to enable it to recover the cost of removal of such nuisance. The expenses and costs incurred by the Competent Authority for removing or abating such nuisance are to be recovered from the person who has caused such nuisance.

8. Section 8 of the Act of 2001 reads as under:-

*Expenses and costs for removing the nuisance. -
The expenses and costs incurred, if any, the
Competent Authority in removing or abating such
nuisance, shall be recovered from the person who
has caused such nuisance or from the owner/
occupier of the object which has contributed to
the nuisance, in the same manner as arrears of
land revenue.*

Section 8 of the Act of 2001 empowers the Competent Authority to recover the expenses and costs incurred from the person who has caused such nuisance. There cannot be any doubt that an order passed under Section 8 of the Act of 2001 results in civil consequences qua the person from whom such recovery of such expenses or costs are required to be made.

9. It is well settled that an order resulting in civil consequences ought to be passed after complying with the principles of natural justice. Reference in this regard can be usefully made to the decision in *Rajesh Agarwal (supra)* wherein it has been held that

the principle of *audi alteram partem* entails that an entity against whom the evidence is collected must: (i) be provided an opportunity to explain the evidence against it, (ii) be informed of the proposed action and (iii) be allowed to represent why the proposed action should not be taken. The provisions of Section 8 of the Act of 2001 do not specifically exclude the applicability of principles of natural justice. It is, therefore, urged on behalf of the respondents that there is an implied exclusion of the applicability of the principles of natural justice considering the fact that public funds are sought to be recovered. The Supreme Court in ***Mangilal V/s State of Madhya Pradesh, (2004) 2 SCC 447*** has observed in paragraph 10 as under:-

"10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the

contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. 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 where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless round excluded by express words of statute or necessary intendment. ...Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in

themselves."

10. In *Manohar (supra)*, the principle that even if a right of hearing is not specifically provided, the same shall be granted unless it is specifically excluded was reiterated. This was all the more necessary when such exercise was likely to visit the person with civil consequences. In *Automotive Tyre Manufacturers Association (supra)*, it has been held that unless a statutory provision either expressly or impliedly excludes the principles of natural justice, the requirement of giving reasonable opportunity of being heard before an order is made is generally read into the said provision. This principle was applicable irrespective of the fact whether the power conferred on the statutory authority was administrative or quasi-judicial in nature.

11. From the aforesaid, it is clear that even if there is no mention whatsoever of the requirement of complying with the principles of natural justice under Section 8 of the Act of 2001, the same would have to be read into the said provision so as to ensure compliance of the principles of natural justice as well as procedural fairness. On a reading of the Act of 2001 and especially Section 8 thereof we do not find any reason to hold that the principles of natural justice

stand excluded even by implication. The action of recovering expenses and costs for removing the nuisance does result in civil consequences qua the person from whom they are to be recovered. If the recovery of expenses and costs incurred is undertaken without complying with the principles of natural justice, the remedy of appeal as provided under Section 11(1) of the Act of 2001 against such order would not be a meaningful remedy as there would be no basis for the Appellate Authority to determine whether the actual amount of expenses and costs for removing the nuisance have been sought to be recovered or not. Moreover, the jurisdiction of any Court to take cognizance of any suit, appeal or proceeding against any order passed under the Act of 2001 is barred in view of Section 11(2). In the light of the aforesaid, we do not find that the operation of the principles of natural justice are impliedly excluded from the provisions of Section 8 of the Act of 2001.

12. Once it is found that the original order was passed by the Competent Authority without giving any opportunity of hearing to the petitioner, the same is liable to be set aside as having been passed in violation of the principles of natural justice. Consequently, the appellate order would also not survive as a result

of quashing of the original order. In our view, the appellate Authority committed an error in not giving due importance to the aspect of compliance of the principles of natural justice. Hence, the order dated 15/07/2019 passed by the Competent Authority as well as the order dated 28/06/2024 passed by the Appellate Authority are liable to be quashed and set aside. We order accordingly.

13. As a consequence of the aforesaid, the Competent Authority would be required to undertake the exercise contemplated by the Section 8 of the Act of 2001 afresh after complying with the principles of natural justice and giving an opportunity to the petitioner. Such liberty is granted to the respondents. The Competent Authority shall take necessary steps to determine the amount of expenses and costs incurred for removing the nuisance and recovering it from the person who has caused the same in accordance with Section 8 of the Act of 2001. The petitioner shall co-operate in the completion of the aforesaid exercise. It is clarified that this Court has not examined the rival contentions on merit and the same are kept open for being raised before the appropriate forum and for being considered in accordance with law.

At this stage, the learned counsel for the petitioner on instructions submits that without prejudice to the rights and contentions of the petitioner as well as the challenge raised by it to the validity of the Act of 2001 in Writ Petition No.111/2003, an amount of Rs.20,00,00,000/- (Rupees Twenty Crores only) shall be deposited by it in this Court to show its bonafides. He states that an amount of Rs.10,00,00,000/-(Rupees Ten Crores only) would be deposited within a period of three months from today and further amount of Rs.10,00,00,000/-(Rupees Ten Crores only) would be deposited within a further period of three months thereafter. The statement is accpeted. The amounts as and when deposited shall be invested in fixed deposit subject to outcome of the proceedings under Section 8 of the Act of 2001.

14. Rule is made absolute in the aforesaid terms with no order as to costs.

NIVEDITA P. MEHTA, J.

A. S. CHANDURKAR, J.