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(2017) 01 JH CK 0053

In the Jharkhand High Court

Case No : W.P. (C) No. 3887 of 2015

Bishnu Chandra Choudhary — APPELLANT

Vs

The State of Jharkhand — RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:
Constitution of India, 1950 — Article 14
Mines And Minerals (Development And Regulation) Act, 1957 — Section 15, Section 4A

Citation : (2017) AIR(Jharkhand) 84 : (2017) 2 AIRJharR 344 : (2017) 2 JLJR 220

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Indrajit Sinha, Mr. Bibhash Sinha and Mr. Krishanu Ray, Advocates, for the Petitioner; Mr. Rajesh Kumar, G.P.V, for the Respondent

Final Decision : Allowed

Judgement

Mr. Aparesh Kumar Singh, J.—Heard counsel for the parties.

2. The respondent-Department of Mines and Geology has by the impugned communication (Annexure-12) bearing memo no. 1716 dated 11th August, 2015 terminated the lease of the petitioner after the matter was remanded in the previous writ petition being W.P.(C) No. 4801 of 2014 vide judgment dated 21st February, 2015 in the following terms:-

"8. In view of aforesaid, I am of the opinion that one opportunity is required to be given to the petitioner for defending lease-deed executed in his favour and accordingly, order contained in letter dated 03.09.2014 is hereby quashed. The matter is remanded back to the respondent no. 2 for taking a decision afresh, after granting adequate opportunity to the petitioner for presenting his case including production of evidence in support of his defence. The petitioner is directed to submit his reply to show-cause dated 28.04.2014 within a period of two weeks and a decision may be taken by the respondent no. 2 within next six weeks. The writ petition is allowed in the above terms. I.A. No. 222 of 2015 also

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stands disposed of."

3. Challenge to the impugned order has been made primarily on the grounds of violation of principles of natural justice and lack of fairness in the decision making process. It is inter-alia alleged that

(i) The impugned order has been passed on the grounds which were not part of the show cause dated 28th April, 2014 (Annexure-7).

(ii) The impugned order merely incorporates the charges levelled in the show cause without any finding upon consideration of the reply submitted by the petitioner on 09th March, 2015.

(iii) Not only the show cause but the impugned order also lacks in specific instances of the violations alleged.

(iv) It also refers to a report of the Assistant Mining Officer, Jamshedpur bearing letter no. 1261 dated 04th April, 2015 which was not part of the show cause and in fact has been taken into account after the submission of show cause by the petitioner on 09th March, 2015.

(v) It is urged that the respondents have sought to justify their action on the basis of the averments made in the counter affidavit and additional documents filed on 06th December, 2016 by way of an affidavit which were undisputably not part of the show cause notice. By way of the Additional documents brought on record on 6th December, 2016, the respondents have sought to defend their action based on the enquiry report of the Committee of the Legislative Assembly which were conducted behind the back of the petitioner.

(vi) The lease in question is a statutory lease, entered in Form-K under the Mineral Concession Rules, 1960 (hereinafter to be referred to MCR). The show cause is not in consonance with the provisions of the Rule 27(5) of MCR where under power to terminate lease for failure to remedy the breach of the terms and conditions of the lease are to be exercised by the State. Rule 27(5) of the MCR stipulates a 60 days notice to remedy the breach and only thereafter the order of termination of lease may be passed if the lessee fails to satisfy or remedy the breach alleged. The show cause was also lacking in this regard. Judgment of the Apex Court in the case of Mohinder Singh Gill v. Chief Election Commr. New Delhi & Ors. reported in (1978) 1 SCC 405 also relied upon in a recent judgment rendered in the case of State of Punjab v. Bandeep Singh & Ors. reported in (2016) 1 SCC 724 have been cited in support of the contention that the reasons contained in the impugned order cannot be supplemented through subsequent affidavits filed in the instant proceedings.

4. According to the petitioner, the impugned order is not a reasoned order in the eye of law as it does not show any application of mind. Reliance has been placed on the judgment rendered by the Apex Court in Kranti Associates Private Limited & Anr. v. Masood Ahmed Khan and Others reported in (2010) 9 SCC 496, para-47. The impugned decision has entailed serious adverse consequence and

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also caused prejudice to the petitioner. The action of the respondents lacks fairness in decision making process and is in violation of the principles of natural justice. Since a right to fair hearing has also been denied the impugned decision cannot be sustained in the eye of law. Reliance has also been placed upon the judgment rendered by this Court in the case of Tarsem Singh v. The State of Jharkhand & Ors. reported in 2016 (3) JLJR 249. It is submitted that the respondents cannot get away from taking any action as per the procedure prescribed in law in case of such a statutory lease. Therefore, judicial review under Article 226 of the Constitution of India is wholly warranted. Reliance has been placed on the judgment of the Apex Court in the case of Verigamto Naveen v. Govt. of A.P. And Ors. reported in (2001) 8 SCC 344. It is the case of the petitioner that the respondents State are obliged in law to adhere to the statutory scheme. If the statute prescribes a particular thing to be done in a particular manner the same has to be done in the same manner and in no other way. Petitioner has placed reliance on the judgment reported in AIR 2016 SC 1817 para 16 in support of the aforesaid submission. It is submitted that petitioner should be granted adequate opportunity to defend itself. The matter should be remitted to the respondents for issuing a proper show cause in conformity with the statutory rules containing all specific instances of violations alleged.

5. The brief facts of the case as canvassed by the parties are also being noticed herein below in order to appreciate the issue raised herein. Petitioner was granted a mining lease for mining Magnesium Silicate (pyroxenite) over an area of 4.49 hectares in Mauza Gamharkocha, P.S. Ghatshila, District East Singhbhum for a period of 20 years with effect from 31st January, 2001 executed in Form-K of the MCR. A criminal prosecution was initiated against him being Potka P.S. Case no. 28 of 2003 under Sections 379/411 of Indian Penal Code and Section 4/21 of the MMDR Act by the respondents. It was however quashed by this Court in W.P. (Cr.) No. 150 of 2006 vide order dated 04 November, 2009 (Annexure-2) and also upheld by the Apex Court on dismissal of the Special Leave to Appeal (Cr.) No. 13711 of 2010 (Annexure-3) vide judgment dated 12th July, 2010. According to the petitioner, Vigilance Bureau, Jharkhand submitted a report to the Advisor to the Governor of Jharkhand on 14th May, 2013 alleging that it has failed to pay royalty for a huge quantity of mineral. This was also communicated to the Principal Secretary, Department of Mines and Geology by the Deputy Secretary, Cabinet (Vigilance) Department, Government of Jharkhand on 24th June, 2013. Petitioner states that a recommendation to cancel the mining lease of the petitioner as per the rules was also approved by the Hon''ble Chief Minister of the State in view of the Vigilance Bureau report. This was followed up by the show cause notice dated 28th April, 2014. The decision taken thereupon on 03rd September, 2014 (Annexure-9) however, was quashed by the coordinate bench of this court in W.P.C. No. 4801 of 2014 vide judgment dated 21st February, 2015 primarily on the grounds of violation of principles of natural justice as the petitioner had not got adequate opportunity to file his show cause. After

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quashing of the said decision petitioner has responded to the same show cause on 09th March, 2015 where after the impugned order has been passed on 11th August 2015. During pendency of the writ application the respondents have been restrained from granting lease of mines with any third party vide order dated 21st August, 2015.

6. Respondents State in its first counter affidavit have stated in the following terms:- After execution of the lease on 07th February, 2001, petitioner has disobeyed important terms and conditions of the lease and never bothered to remedy the same despite several notices such as letters dated 12th June, 2003; 19th June, 2003; 31st October, 2007; 29th September, 2009 and several such letters such as dated 21st December, 2013, marked as Annexure-A Series. It has also been stated that petitioner did not venture to give reply to the above mentioned notices or letters although he had received letters dated 22nd May, 2013, 03rd July, 2013, 30th May, 2013 and 02nd July, 2013 (Annexure-B Series to the counter affidavit). The Deputy Commissioner East Singhbhum had also recommended to the State Government to terminate the mining lease of the petitioner vide letters dated 15th September, 2003 and 07th November, 2003 alleging that petitioner was undertaking mining work with collaboration with Naxalites i.e. Peoples War Group. The Deputy Commissioner also followed up requesting to take action against the petitioner vide letter no. 677 dated 03rd March, 2006. It also came to light through letter dated 14th May, 2013 of the Additional Director General of Police, Vigilance Bureau, Jharkhand that in the supplies made to the Raw Materials Management Division of Tata Steel, petitioner had suppressed the information about the actual supply made. For example, Materials Management Division of Tata Steel informed that petitioner had supply 29668.81 Tonnes of pyroxenite over 990 trips in financial year 2011-12 and 1,54,988.39 Tonnes of pyroxenite in 5387 trips of truck load in financial year 2012-13, whereas petitioner in his monthly returns to the District Mining Officer, Jamshedpur showed transportation and supply of only 22,876.67 Tonnes of minerals in the year 2011-12 and 54,818.11 Tonnes in financial year 2012-13. He had therefore concealed the supply of 1,06,962.42 Tonnes of pyroxenite in these two years and deliberately defrauded the public exchequer of huge amount of revenue. This amounted to evasion of commercial taxes by the petitioner as he concealed an additional gross turn over of Rs. 1,91,06,906/- for the relevant financial year. It is also alleged that he failed to pay commercial taxes on his Gross Turnover of Rs. 12, 61,69,985/- in financial year 2012- 13. All these facts being brought to the notice and after enquiry, the Hon''ble Chief Minister was pleased to pass an order dated 22nd February, 2014 to terminate the mining lease of the petitioner as per law and to propose in respect of Ratnesh Kumar Sinha and Niranjan Prasad. The impugned action was taken thereafter in conformity with the principles of natural justice. Petitioner should have availed the remedy of revision, if aggrieved, before the Central Government Mining Tribunal in terms of Section 30 of MMDR Act 1957 instead of invoking jurisdiction of this Court.

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7. The respondent sought leave of this Court through I.A No. 8181 of 2016 to file additional documents which have been brought by way of supplementary counter affidavit on 06th December, 2016. This affidavit in turn seeks to bring on record the 28th report of Prashan Evam Dhyanakarshan Samittee of Jharkhand Assembly about violation of rules and regulations of Mines, Sales Tax, IBM, DGMS, Forest, Pollution Control Board and Transport marked as Annexure-1/A to the affidavit. Other letters written by the Deputy Commissioner, East Singhbhum dated 05th February, 2011 alleging illegal mining outside leasehold area is also enclosed as Annexure ? 3/A. Letter dated 22nd June, 2012 of the Regional Controller of Mines, Indian Bureau of Mines alleging violation by the petitioner and suspension of mining operation is enclosed as Annexure-4/A. Annexure 5 series are letters of the Divisional Forest Officer, Jamshedpur; Regional Officer, Jharkhand State Pollution Control Board and District Transport Officer, Jamshedpur relating to violation of rules by the petitioner. The Director (Geology) had also submitted a report on 12th September, 2014 alleging illegal mining in 44.67 Acre of land against the leasehold area of only 3.20 Hectare (Annexure-6/A). Annexure-7/A is a letter of demand of Rs. 10,04,24,012/- issued by the Assistant Mining Officer, Jamshedpur to the petitioner on 13th May, 2014. Averments also refer to a meeting organized by the Principal Secretary, Department of Mines and Geology for auction of the available Pyroxenite material and steps for recovery under Public Demand Recovery Act. Certificate case no. 19 (JSR) / 2016 has been initiated against the petitioner by the Certificate Officer (Mines) Kolhan Circle, Chaibasa for recovery of demand of Rs. 11 Crore 30 Lakh and odd. Counsel for the respondent State however does not dispute the contention of the petitioner that these documents were neither part of the show cause notice nor have been furnished to the petitioner before passing of the impugned order.

8. In the aforesaid factual canvass of facts, the challenge to the impugned order on the grounds raised are required to be dealt with hereinafter.

9. In order to test the grounds of challenges urged by the petitioner and referred to in the opening paragraphs of this judgment, it would be proper to reproduce the content of the show cause notice dated 28th April, 2014 and the text of the impugned order containing the findings therein by the respondent department:-

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1716@,e0] jkWaph] fnukad 11-08-2015"

10. Paragraph-1 of the show-cause alleged that in the year 2011-12 and 2012-13 petitioner extracted 29668.81 M.T. and 154988.39 M.T. of minerals respectively. However, the quantity for which return was filed was 22876.67 M.T and 54818.11 M.T respectively. In the impugned decision the findings at paragraph-1 are to the effect that as per the report of the District Mining Officer, East Singhbhum, Jamshedpur contained in letter no. 1077 dated 22nd April, 2013 the petitioner had submitted in correct returns of mining of minerals Pyroxenite in the year 2008-09. Apparently this finding does not corroborate to any charge in the show cause notice. The second charge alleged that the petitioner had obtained 500 transport challan in the month of January, 2012 and thereafter no transport challan was obtained by him. Therefore mineral was transported without transport challan. Findings at para-3 of the impugned order are to the effect that the petitioner transported mineral through 500 transit challan thereafter transported mineral without any valid challan. Aparently there are no finding upon consideration of the reply submitted by the petitioner in respect of the show cause notice on 09th March, 2015. The 3rd charge alleged evasion of payment of royalty and tax in showing the less transportation of mineral than the actual raised. The findings in this regard are contained at para 2 of the impugned order to the effect that Assistant Mining Officer, Jamshedpur in letter no. 1179 dated 22nd May, 2013 alleged illegal mining and transportation of mineral causing a demand of Rs. 83,77,476/- un-paid by the petitioner. Petitioner has, while questioning the instant finding, also alleged that these are new allegations of facts incorporated in the impugned order not reflected in the show cause. The 4th charge contained the allegation that the petitioner has not made payment of arrears of mineral transported to the tune of Rs. 8,69,47,192/-. There are no findings in this regard in the impugned order after consideration of the reply of the petitioner. Charge No. 5 related to non-furnishing of correct return of raising, transmission and stock maintenance of mineral. Findings in respect thereof are apparently at paragraph 7 of the impugned order that petitioner has submitted incorrect monthly returns which is an attempt to cause loss to the state exchequer. Findings at paragraph 4 of the impugned order do not relate to any such charge in the show cause notice nor the letters dated 06th March, 2010, 29th August, 2013, 13th May, 2014, etc. were served to the petitioner along with the show cause notice. The findings contained at paragraph 5 that the petitioner violated the terms of lease by resorting to mining beyond the leasehold area are vague like the charge contained at paragraph 6 of the show cause notice. It contains no specification or extent of the area on which mining was done beyond the leasehold area. Findings at paragraphs 6 and 8 relating to mining against the mining plan and violation of the provisions of the

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Forest Act were also not part of the show cause notice.

The scrutiny of the charges and the findings recorded in the impugned order here-in-above, therefore do substantiate the contention of the petitioner that not only are the findings recorded without consideration of the reply furnished by the petitioner, but they travel beyond the show cause notice. They do not contain specific reasons which are the essential attribute of a reasoned order. While taking a decision causing adverse civil consequences, the administrative/quasi judicial authority is required to record its finding which reflect application of mind upon due consideration of the defence furnished by the noticee on the charges alleged. They also lead the Appellate Court or the Court exercising judicial review to scrutinize the reasons. In this regard it is only appropriate to refer to the judgment rendered by the Apex Court in the case of Kranti Associates Pvt. Ltd. (Supra) where the Hon''ble Court has summarized discussion on the necessity to record reasons in administrative decision which affects any one pre-judicially. Pare-47 of the report is quoted hereunder:-

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants'' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and

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transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

11. It is not in dispute that the documents enclosed as Annexure-A and B series to the first counter affidavit were not part of the show-cause notice issued upon the petitioner. They reflect the previous correspondences made on the subject. It defies reason as to why the authority empowered to undertake the decision has chosen to issue a show-cause notice devoid of essential details and any such documents in support of the charges. The finding recorded in the impugned order also are mere reproduction of the charges alleged in the show-cause. The decision to terminate the lease of the petitioner has a serious adverse consequence. It cannot be disputed that non-service of such documents and lack of specific charges in that regard in the show-cause entailed serious prejudice to the petitioner. The principles of natural justice have developed over a period of time and are in vogue i.e. (i) rule against bias i.e. nemo debet ess judex in propia sua cause; (ii) opportunity of being heard to the party concerned; audi alteram partem. These principles have also further developed by incorporating the 3rd principle i.e. duty to give reasons in support of decision by passing a reasoned order. Whenever such a grievance is raised before a court that some principles of natural justice is contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The validity of the order has to be decided on the touchstone of prejudice or the test of fair hearing. The principle of law has developed from time to time

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and explained by the Hon''ble Apex Court in the case of Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati & Ors. reported in (2015) 8 SCC 519, relied upon by this Court in a judgment rendered in Tarsem Singh v. The State of Jharkhand & Ors. reported in 2016 (3) JLJR 249. The illuminating opinion of the Apex Court on the underlying jurisprudential basis in the requirement of observing procedural fairness and that it cannot be a matter of secondary importance in the decision making process, is reproduced hereunder :-

"Para-19. What is the genesis behind this requirement ? Why it is necessary that before an adverse action is taken against a person he is to be given notice about the proposed action and be heard in the matter ? Why is it treated as inseparable and inextricable part of the doctrine of principles of natural justice?

20. Natural justice is an expression of English Common Law. Natural justice is not a single theory it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called "naturalist" approach to the phrase "natural justice" and is related to "moral naturalism". Moral naturalism captures the essence of commonsense morality-that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practise of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "natural justice". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. nemo-debet esse judex in propria sua cause; and (ii) opportunity of being heard to the part concerned i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "reasoned order".

22. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya''s Arthasastra. This Court in Mohinder Singh Gill v. Chief Election Commr. explained the Indian origin of these principles in the following words: (SCC pp. 432-33, para 43)

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

24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take and administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

25. This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as "hearing the other side". Prof. D.J. Galligan attempts to provide what he calls "a general theory of fair treatment" by exploring what it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasising that taking of correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision-making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:-

"On this approach, the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial.

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The law and its processes are simply instruments for achieving some social good as determined from time to time by the law-makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case. At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved."

Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit of common good involves the distribution of benefits and burdens, advantages and disadvantages to individuals (or groups). According to him, principles of justice are the subject-matter of fair treatment. However, that aspect need not be dilated upon.

32. .....

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Whenever a complaint is made before a court that some principle of natural justice has 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. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In Board of Mining Examination v. Ramjee, the court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The courts cannot look at law in the abstract or natural justice as mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same viz. the

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test of prejudice or the test of fair hearing" (Underline supplied to add emphasis, not part of the original text)."

12. Though every action in violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void, but the validity of the order has to be decided on the touchstone of prejudice. The facts of the instant case leave no room of doubt that absence of a proper show-cause notice containing specific charges and the order passed thereafter have entailed serious prejudice to the petitioner. Petitioner is also right in contending that the respondents could not have supplemented the reasons in the impugned order by way of statements made in the counter affidavit in the present proceeding. Reliance has rightly been placed upon the judgment rendered by the Apex Court in the case of State of Punjab v. Bandeep Singh & Ors. reported in (2016) 1 SCC 724 Para-4, where the ratio rendered by the Apex Court in the case of Mohinder Singh Gill v. Chief Election Commr. New Delhi & Ors. reported in (1978) 1 SCC 405 have also been profitably quoted. Paragraph-4 containing the opinion of the Apex Court is also extracted herein below :-

"4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled Mohinder Singh Gill v. Chief Election Commr. of which the following paragraph deserves extraction: (SCC p. 417, para 8)

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji: (AIR p. 18, para 9)

''9. ...public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.''

Orders are not like old wine becoming better as they grow older."

13. Apparently the respondents have, while taking the impugned decision, failed to conform to the well-settled tenets of principles of natural justice which not only caused serious adverse consequence on termination of the lease deed of the

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petitioner but entailed grave prejudice as well. The decision making process stands vitiated on the aforesaid grounds and it cannot be upheld in the eye of law.

14. Accordingly the impugned order dated 11th August, 2015 is quashed. However, the respondents shall take a fresh decision in the matter after issuing a fresh show-cause notice containing specific charges and the materials in support thereof to enable the petitioner to offer his defence.

15. It is equally contextual to observe that MMDR Act, 1957 and MCR, 1960 or any other applicable rule in that regard provide a statutory frame work. The respondent would act in terms thereof while taking a fresh decision in the matter.

16. Writ petition is accordingly allowed in the aforesaid manner.

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