
(1991) 06 MAD CK 0015
In the Madras High Court

Central Public Works Department and Another	APPELLANT
Vs	
Besant Nagar Residents' Forum and Others	RESPONDENT

Date of Decision : 25-06-1991

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1991) 2 MLJ 260

Hon'ble Judges : Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—W.A. No. 548 of 1990 by the Union of India, W.A. No. 648 of 1990 by the madras Metropolitan Development Authority and

W.A. No. 554 of 1990 by the Contractors who had been entrusted with the execution of the work of construction of an Office Complex for the

Public Works Department of the Central Government, are directed against the order in W.P. No. 5678 of 1989 filed by the first respondent in all

these appeals, viz., Besant Nagar Residents Forum represented by its Secretary, who incidentally also has preferred W.A. No. 1007 of 1990

against the same very order. Moving this Court for a writ of certiorari and a consequential mandamus for quashing Notification No.

VI(1)/951/88(D2(R)10070/87) dated 17.10.1988 and praying to restrain the respondents from proceeding with any construction of any Office

Complex in a piece of land measuring about 7 acres comprised in S. Nos. 46 (part), 47 and 49 of Uroor village, Besant Nagar, the Writ Petitioner

(first respondent) alleged that Besant Nagar and its vicinity in the City of Madras which was originally planned as a primary residential locality and

accordingly classified as a residential Zone was, in violation of the provisions of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter

referred to as the "Act") and the rules framed the reunder, reclassified as institutional Zone.

2. In a well considered judgment in the writ petition wherein all relevant facts have been stated it is difficult to find any error yet, since learned

Counsel for the appellants have chosen to canvass before us for a remand for re-hearing on the ground that principles of natural justice were not

adhered to, in order to justify we propose to state the fundamental facts for the contentions that have been raised before us and deal with afresh

even at the cost of repetition of the citations and the findings recorded by the learned single Judge.

3. The petitioner has claimed that according to the plans approved u/s 28 of the Act, Besant Nagar was acknowledged as a residential Zone. The

Madras Metropolitan Development Authority, hereinafter referred to as the "M.M.D.A.", for short, as well as the Corporation of Madras always

sanctioned building plans on that basis and provided infrastructure such as sewerage, drinking water, public health facilities, shops and public

establishments, etc. as planned for a primary residential locality. In the course of the development, according to the writ petitioner-first respondent,

every inch of available space, except for a plot of land situate opposite to the Olcott School and measuring about 7 acres comprised in S. Nos. 46

(part), 47 and 49 of Urur village was occupied by the residential houses and such other establishments which are required for a residential area.

The open space of 7 acres which was originally acquired by the Tamil Nadu Housing Board along with other lands in Besant Nagar area for the

specific purpose of developing it into a residential locality was somehow transferred to the Central Public Works Department. The writ petitioner-

first respondent found to its dismay that the fourth respondent in the writ petition, Central Public Works Department started construction activities

in the said lands "in a totally unplanned and reckless manner in contravention of all developmental rules". The petitioner learnt that the fourth

respondent proposed to construct a mammoth office complex having a floor space of about 1, 50, 000 sq.ft. plinth area on the vacant site. The

writ petitioner-first respondent then made representations to the "M.M.D.A.". Having found that the fourth respondent was proceeding with the

construction activities of the proposed Office Complex without complying with the provisions of the Act and the rules and without any approved

plan, the Development Authority (M.M.D.A.) stopped the said construction and informed the petitioner-first respondent accordingly on

11.10.1986. The fourth respondent, according to the writ petitioner (first respondent) the reafter approached the first respondent M.M.D.A. to

reclassify the land as institutional Zone, which in turn would permit it to put up the complex. The member Secretary of M.M.D.A. as a delegate of

the State Government took up the matter of re-classification and at some stage noticed the writ petitioner first respondent inviting objections and

asking it whether it desired to be heard. Several objections were filed to the proposed reclassification including objections by the writ petitioner-

first respondent, Vide its representation dated 20.8.1988. The Member Secretary called the objectors for a discussion Vide letter dated 2.9.1988.

Such a meeting was held on 8.9.1988 in which the Chief Planner and the Member Secretary participated. The writ petitioner-first respondent gave

its representations on that day as well objecting to the re-classification. Its objections primarily were:

(1) The classification would result in increasing the noise and dust pollution in the residential area and beyond bearable limits;

(2) The existing infrastructure of civic amenities was made only for a ""Primary Residential Zone"" and it would not be in a position to cater to the

sudden influx of a huge floating population on account of the proposed office complex.

(3) The residents of Besant Nagar are entirely dependent on ground water for their needs. The rate of extraction of ground water is in excess of

the replenishment of ground water. In fact, in August, 1985, the Besant Nagar Citizens' forum and Kalakshetra Colony Welfare Association, both

affiliates of the writ petitioner first respondent, at the request of the Tamil Nadu Prevention and Control of Water Pollution Board vide its letter No.

13630/88T1(4) dated 6.9.1985, conducted a survey of the rate of extraction of ground water in the Besant Nagar Area. It has established that

from dozen larger wells approximately 4,50,000 gallons of water was extracted per day. Apart from this, an estimated 1,000 private borewells (1-

1 1/2"" diameter) have accounted for an additional 2, 000 gallons per day. The reserve Bank of India Staff Quarters situated near the proposed

project of the fourth respondent drew approximately 1,85,000 gallons of ground water per day from two wells. The extraction of ground water on

these lines at the rate of approximately 1.25 million gallons per day, as stated above, unless replenished, would result in the incursion of sea water

from below. Once such incursion takes place the process is irreversible and would lead to a catastrophic situation where the entire ground water in

the Besant Nagar area would turn blackish making it unfit for human consumption.

4. Ignoring, however, the objections and acting without jurisdiction, according to the writ petitioner-first respondent, the member Secretary issued the impugned Notification.

5. In the return filed on behalf of M.M.D.A. it is conceded that the land in S. Nos. 46 (part), 47 and 49 of Uroor village was a site for primary

residential use in the approved layout of the Tamil Nadu Housing Board and it is also stated that the same was sold to the Central Public Works

Department-fourth respondent in the writ petition by the Housing Board for a valid consideration. It is further stated that originally the master plan

for Madras Metropolitan area was prepared in 1975 in accordance with Section 17 of the Act, that the preparation of the detailed development

plan as contemplated u/s 10 of the Act was to be done later and that the State Government possessed the power u/s 32(4) of the Act to vary,

revoke or modify the plan. The Government delegated its power u/s 32 to the Member Secretary of the Developmental Authority Vide G.O. MS.

No. 419, Housing and Urban Development Department dated 1.5.1984 and that exercising this power the Member Secretary re-classified S.

Nos. 46(part), 47 and 49 of Uroor village from primary residential use zone to institutional use zone.

6. In the counter-affidavit filed on behalf of the Central Public Works Department and the Union of India, it is stated that the land had been

purchased solely for Central Government's use and the proposal to construct office complex was to benefit the local residents including Central

Government employees at Besant Nagar and neighbouring area. Saying in some details why the Central Government decided to move for re-

classification of the land as institutional zone, it is stated that the construction work was taken up only after the approval of plans by them. M.D.A.

The counter affidavit contains a statement of certain facts suggesting that the decision to construct the office complex was taken for the reason that

such a complex would invite only floating population of visitors and staff and not put in residents on permanent basis who would cause more pressure on sewerage, electricity and water supply. In other words, the area of plot being 7.00 acres, the Department could have constructed 500 quarters with allowed floor space index (F.S.I.) of 1.6 for this area. By providing these 500 quarters, the consumption of water per day could be easily 1,00,000 gallons. Now, the Central Government has proposed to construct an office accommodation with the useful area of 22,000 sq.m. which would accommodate only 1,500 persons. The consumption of water would be around 15,000 gallons per day which is only 1/6th of the consumption, had the residential quarters been constructed. The re-classification will result in a reduction of strain on the drainage system, traffic, etc. which will be beneficial to the residents of Besant Nagar. The sewerage discharge from the quarters will be much more and thus by proposing the office accommodation, the Central Government has reduced the load on the sewerage system. We are not required in the instant case to traverse through all that had been argued before the learned single judge or to pronounce upon the respondent-petitioner's locus standi to question the re-classification on grounds inter alia of violation of the provisions of Tamil Nadu Town and Country Planning Act, 1971, whether there has been actually any violation of any provisions thereof in entertaining the application of the Central Public Works Department by the M.M.D.A. as after taking notice of such arguments, learned single Judge has said in his order that in course of deciding to re-classify the land as institutional zone, the Member-Secretary of the M.M.D.A. did issue a notice to the respondent-petitioner, allowed them to file objections, held some sort of discussions with their representatives and the reafter decided to re-classify and change the class of land from primary residential zone to institutional zone. Learned single Judge has found however that in course of inquiry into the objections of the respondent-petitioner, the Member-Secretary violated the principle of natural justice and since full and adequate opportunity of being heard was not afforded to them, the decision of the Member-Secretary fell in error.

7. There is the long line of decisions saying that when the law under which any authority is required to take a decision, which is likely to affect some

one's right or interests whether individual or in common with other persons, he must act in accordance with the principle of natural Justice. Any decision which causes a civil consequence, has to conform to the rules applied to quasi judicial proceedings. If the statute demands a notice of hearing, it makes a clear provision for it. If, however, it does not make any such provision, but also introduces no provision to a hearing, rules of natural Justice step in. The rule of *audi alteram partem* it is now established, must inform every quasi judicial process. And what does it say? Does it only say that those who should be heard, were likely to be condemned? Courts in India like Courts in England have adopted it as a principle of wider amplitude holding that it must not be given a narrow meaning and that full and adequate opportunity of being heard alone will justify any quasi judicial process. Besides this and yet another rule of natural justice, viz., *Nemo debet esse iudex in causa propria sua*, a third rule has taken roots that in deciding disputes and differences and in such other adjudications, orders made must contain sufficiently clear and explicit reasons; the n alone administrative authorities and tribunals exercising quasi judicial functions will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The law in this regard has been stated in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, by the Supreme Court in these words:

If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. The n alone, administrative authorities and tribunals exercising quasi judicial functions will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

The Supreme Court has in one of its latest judgments in *Rajpur Development Authority v. Chokhamal Contractors* AIR 1990 S.C. 1426,

observed,

It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the

conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator

or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of

submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision, it is open to the

Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going

through such reasons. The arbitrator or umpire shall have to give reasons also where the Court has directed in any order such as the one made u/s

20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

We have already observed that the two recognised principles of natural Justice were (i) that a Judge or an Umpire who is entrusted with the duty

to decide a dispute, should be disinterested and unbiased, *Name debut cess judex in causa propria sua* and (ii) that the parties to dispute should be

given adequate notice and opportunity by the Authority, *audi alteram partem*. For the first time, this Court laid down that the rule requiring reasons

in support of an order is a third principle of natural justice. It may be observed in *Bharat Raja Vs. The Union of India (UOI) and Others*, , that the

Court may require a Tribunal to give reasons in support of its order in order to make the exercise of power of the High Court under Articles 226

and 227 of the Constitution and the power of this Court under Article 136 of the Constitution of India effective." In yet another case in *Km.*

Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, , the Supreme Court has observed,

An administration function is called quasi judicial when there is an obligation to adopt the judicial approach and to comply with the basic

requirements of justices. Where there is no such obligation, the decision is called "purely administrative" and there is no third category.

....

The shift now is to a broader notion of fairness or fair procedure in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly. For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have lites inter parties. There need not be any struggle between two opposing parties giving rise to a lie. There need not be resolution of lis inter parties. The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness of in the administration. But the n even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistent with the rule of natural justice.

We cannot discover any principle contrary to this concept. We quote a specific finding in the order of the learned single Judge, we think, it is not necessary to refer to any foundational facts, as he has found, Water is the most important of the elements of the nature". In State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, , the Supreme Court has held that every person is entitled to life as enjoined in Article 21 of the Constitution, that he has also the right under Article 21 to hie life and that right under Article 21 embraces not only physical existence of life but also the quality of life. Considering the allegations made by the petitioner Association and the complaints made with regard to the intrusion of the sea water into ground water, I am of the view that the petitioner should have the right of using the ground water without any infiltration and without any pollution due to the construction of a huge office complex. In view of the constitutional imperatives, I am of the view that the denial of right would be denial of life as understood in its richness and fullness by the ambit of the Constitution. In Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, , it has been held that that object alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life." All the

materials placed before me by the petitioner association for consideration and the report of the Consultant dated 27/02/1990 produced by the

petitioner association will clearly shows that the water sample made in three different locations show that if in the western part, the extraction of

ground water is increased, it will result in an irreversible phenomenon of sea water intrusion towards west and the whole area will be spoilt by

salinity. The report of the Chief Water Analyst dated 23.6.1989 addressed to the Assistant Engineer, Central Public Works Department, Madras

only shows that the water is usable for building construction purposes. As stated in paragraph 13 of the affidavit, I.S.I. specification for drinking

water, in dissolved solids maximum is 500 ppm, and in the objections raised by the petitioner association, it has been clearly stated that due to

overdrawal of water, sea water intrusion is taking place and a detailed study on the ground water resources of Besant Nagar and its vicinity was

conducted and it will be seen from the result of the study that the water is unfit for human consumption per I.S.I. standards. I am of the view that

this aspect of the matter has not been considered.

The above discussion alone is enough in our opinion to justify the directions issued by the learned single Judge for a re-hearing of the whole matter

and a decision taken strictly in accordance with the principles of natural justice. Them. M.D.A. in its notification No. D2/B/6/88 had stated:

Any person who intends to make any objection or suggestion/representation as regards the above variation proposal may do so in writing to the

member-Secretary, Madras Metropolitan Development Authority within 21 days from the date of this Notification....

The respondent petitioner had sent a representation and asked for a personal hearing. The member-Secretary, it seems, called the representatives

for a discussion on 8/9/1988 at 3 p.m. It also appears that the files had been placed before the technical expert committee on 22/08/1988 which

committee recommended the re-classification. Learned single Judge has noticed:

I am not able to see anything in the file to the effect that the objection, especially with regard to the ground water problem and the ecological

imbalance which were raised by the petitioner association was considered before ordering the reclassification of the land in question.

He has also said

Except the meeting held with the members of the forum, I do not see anything in the file that their objections have been considered fully by the first respondent herein. As such, in so far as I am not able to find out that their objections were duly considered, I am of the view that the impugned notification has to be set aside on that ground.

8. The law which we have already noticed, leads us to conclude that unless fair and adequate opportunity of being heard is afforded to the respondent-petitioner and their objections are disposed of with clear and explicit reasons as stated in the order, principle of natural justice cannot be said to have been complied with. Nothing has been shown to us to take a view contrary to the view taken by the learned single Judge that fair and adequate opportunity of being heard was not afforded to the respondent-petitioner by the Member-Secretary of the M.M.D.A. It is necessary that in cases of this kind, full care is taken to ensure that no one's right to life is affected whether on account of water pollution or on account of air pollution or any other ecological pollution. All other rights must lead to and serve the right to life because if we exist as a democracy, we exist for the life and liberty of the people of India.

9. We have refrained from making observations as to the hazards which are likely to be caused if office complex is constructed or as suggested by

the Union of India, residential houses or flats are allowed to be constructed. For, we do not think that we shall do justice to the parties without

there being a full and adequate consideration of all the aspects of the matter by the Competent Authority, viz., the madras Metropolitan

Development Authority. Learned Single Judge has committed no error of law in concluding that the impugned notification is fit to be quashed. We

however direct the Member-Secretary of M.M.D.A. to issue fresh notices to all concerned, give opportunity to them to file their respective

objections, make to all concerned all such evidence and materials upon which he is likely to take the decision to re-classify the land known and

thereafter, make a fairly, clear and explicit order dealing with all the I aspects of the matter. All the parties shall be at liberty to examine technical

experts on the subject and scrutinise and contest the report of the technical committee on which the Member-Secretary placed reliance. The

Member-Secretary shall give option to the parties to bring in their own technical

reports or evidence of any technical expert and afford

opportunities to all parties of being heard, including objections as to jurisdiction.

10. With the direction as above, these appeals are dismissed. However, there shall be no order as to costs.