(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

APPEAL NO.43 OF 2022 (WZ)

Balaji Tirupati Cinemas,
A registered partnership firm,
Having its office at 104, Renis CHS Ltd.,
Sony Complex, Link road,
Near Pride Hotel, Malad (W),
Mumbai – 400 064
Through its Partner
Mr. Prakash M. Joshi
Email:dhthakkar9@gmail.com .... **APPELLANT**

VERSUS

1. The Maharashtra Coastal Zone
   Management Authority,
   Through its Member Secretary,
   Environment & Climate Change Department,
   15th Floor, New Administrative Building,
   Mantralaya, Mumbai – 400 032
   Email : dirl.mev-mh@nic.in

2. The Municipal Corporation of Greater Mumbai,
   Having office at Mahanagarpalika Marg,
   Mumbai – 400 001
   Through its Municipal Commissioner
   Email : mc@megm.gov.in

3. Dr. Kirit Jayantilal Somaiya,

....**RESPONDENTS**

AND

APPEAL NO. 44 OF 2022 (WZ)

Expression Studio,
Having its office at 204, Renis CHS Ltd.,
Sony Complex, Link road,
Hangout, Malad (W),
Mumbai – 400 064
Through its Partner
Mr. Prakash Joshi
Email:dhthakkar9@gmail.com .... **APPELLANT**

VERSUS

4. The Maharashtra Coastal Zone
Management Authority,
Through its Member Secretary,
Environment & Climate Change Department,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032
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5. The Municipal Corporation of Greater Mumbai,
Having office at Mahanagarpalika Marg,
Mumbai – 400 001
Through its Municipal Commissioner
Email : mc@megm.gov.in ....**RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Appellants : Mr. Saurabh Kulkarni, Advocate in both appeals

Respondents : Ms. Manasi Joshi, Advocate for R-1 – MCZMA in both appeals
Mr. Sameer Khale, Advocate for R-2 - MCGM In both appeals
Mr. Aditya Bhatt alongwith Ms. Zerna Mehta, Advocates for R-3 – Intervenor in both appeals

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Reserved on : 28.03.2023

Pronounced on : 06.04.2023

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JUDGMENT

1. Both these appeals are preferred seeking quashing of the order dated 12.09.2022 passed by respondent No.1 – Maharashtra Coastal Zone Management Authority (hereinafter referred to as "MCZMA"), allegedly passed in violation of principles of natural justice, equity and fair play.

2. Since the facts involved in both these appeals, grounds raised therein by the appellants and the legal position are identical, both the appeals are being decided and disposed of by this common judgment.

3. The facts of Appeal No.43 of 2022 (WZ), in brief, are as follows:-

4. The appellant is a partnership firm registered under the Indian Partnership Act, 1932, which is engaged in the business of providing its property for film and television shootings. The appellant had entered into a Leave and License Agreement with Sai Shiv Films Pvt. Ltd. of the property bearing CTS No.1496 to 1498, situated at village Erangal, Taluka Andheri – MSD admeasuring 28,428 Sq. Mtrs., which is still subsisting. Thereafter, the appellant applied to the police authorities i.e. Police Inspector in-charge of Kandivali Vahatuk Division for grant of NOC/permission for erecting temporary sets for shooting for a period of six months. The Senior Police Inspector, Malwani Police Station granted NOC/permission on 14.01.2021 for the said purpose. The Fire Department issued NOC on 21.01.2021 to the appellant for a period of six months. Since respondent No.2 – Municipal Corporation of Greater Mumbai ("MCGM", for short) did not decide the appellant's application for erecting temporary structures, the appellant sent a reminder to respondent No.2 on 01.02.2021, seeking shooting permission for temporary structures. The proposal of the appellant was kept before respondent No.1 – MCZMA in its 152nd meeting held on 24.02.2021 wherein it was considered and approved at Item No.36. It is also made clear that the Ward Officer of respondent No.2 had presented the proposal before respondent No.1 and also informed by him that the said property fell in SDZ (Special Development Zone) and CRZ-II area. The Designated Officer of respondent No.2, vide letter dated 02.03.2021, allowed the appellant's application dated 11.01.2021 seeking shooting permission for temporary structure for the period from 12.01.2021 to 12.07.2021. Thereafter, Covid-19 pandemic struck the State of Maharashtra and hence, all the shootings in the State came to an end for a period from March to May, 2021. The earlier permission granted by respondent No.2 was valid until 12.07.2021. The Architect of the

appellant addressed letter/application dated 08.07.2021 to respondent No.2 and sought shooting permission for temporary structures upon the said property for a period of three months, which was allowed by order dated 06.09.2021, granting permission till 12.10.2021 and thereafter the appellant, vide letter dated 12.10.2021, applied to respondent No.1 seeking permission for erecting temporary structures upon the said property, which is annexed as Annexure – A-11. We find that Annexure A-11 is an application moved by one Mr. Viral G. Joshi (Architect of the appellant) addressed to the Assistant Municipal Commissioner, MCGM (respondent No.2) and not to respondent No.1 – MCZMA. Hence, it appears that this averment is not true. Respondent No.2, vide its letter dated 20.10.2021, after considering the appellant's proposal dated 18.10.2021, recommended respondent No.1 the appellant's proposal to be considered favourably and for granting the permission for the period from 13.10.2021 to 12.04.2024. We have gone through Annexure A-12 and find that this is a letter written by the Assistant Engineer of MCGM addressed to respondent No.1 – the Chairman, MCZMA wherein reference is made of a Circular of MCGM dated 01.03.2019 making provision to grant permission for three years for erecting shooting tent sets, but no such circular was shown by the learned counsel for respondent No.2 – MCGM at the time of argument. Respondent No.2 – MCGM, vide order dated 04.02.2022, allowed the appellant's application dated 12.10.2021 whereby shooting permission was sought for temporary structures and the same was granted/extended till 12.04.2022, which is annexed as Annexure – A-18 to the appeal memo. We perused Annexure- A-18 and find that in this permission, no-where it is recorded that before granting the same, approval from respondent No.1 – MCZMA was taken because the area in question fell in CRZ-II, which was a mandatory provision. Moreover, at serial No.4, a condition was stipulated that either the

temporary sets shall be removed immediately after expiry of permission i.e.12.04.2022 or the same will be demolished by MCGM "at your own risk and cost" and the deposit will be forfeited without any further intimation or application for renewal which must be submitted before 01 month of expiry date i.e. 12.04.2022. We find this stipulation to be not appropriate because it would vest power of renewal of the permission in the hands of MCGM without prior approval from MCZMA, which (i.e. taking prior approval from MCZMA), according to us, is a mandatory provision. This stipulation would also show that it would allow the Project Proponent to continue with the structures without their being demolished first after lapse of the grant of permission for six months, which again is found to be in violation because the permissions are meant to be allowed for six months at the upper limit and after lapse of that period, the place is supposed to be restored before making a new application for fresh grant of permission for such kind of activity. Respondent No.2, vide order dated 21.06.2022 (annexed as Annexure-A-21), allowed the appellant's application dated 11/12.04.2021 granting shooting permission for temporary structures till 12.10.2022 wherein also, it has stipulated condition No.4, which is cited by us herein-above.

5. The appellant's proposal was kept for consideration in 159th meeting of respondent No.1 – MCZMA, which was notified through notice dated 01.06.2022, wherein at Item N.35, the matter of the appellant is shown to have been taken for consideration. Respondent No.1 held meeting on 06.06.2022 through video conferencing wherein the appellant remained present through its representative. However, the minutes of the said meeting erroneously recorded that the Project Proponent joined the video conferencing, however, could not show details of the matter and hence, the matter was deferred to day-II. The minutes of that meeting are annexed with the memo of appeal. The appellant again remained present

for hearing on day-II. The appellant's proposal was accepted by respondent No.1; however, due to reasons best known to respondent No.1, minutes of the meeting held on day-III i.e. meeting held on 15.06.2022 were uploaded on the official website of respondent No.1 as minutes of day-II meeting. The appellant regularly followed up with the respondent No.1's office regarding this oversight/error, but no suitable response was received by him, which constrained him to address a letter dated 30.07.2022 seeking a copy of the minutes of the meeting of day-II from respondent No.1. The copy of the said letter has been annexed as Annexure – A-26. Till date, the minutes of the meeting of day-II have not been communicated to the appellant, but the minutes have been discreetly uploaded on the website of respondent No.1, which is annexed as Annexure – A-27. The minutes of the 159th meeting of day-II are also annexed as Annexure- A-28. Upon perusal of these minutes, it is evident that the appellant's matter was not recorded in the minutes of the meeting held on day-II at all, nor any reason was given for such omission. The appellant thereafter received a letter/order dated 26.08.2022 from respondent No.2, directing the appellant to stop filming and other allied activities upon the property in question as the appellant had not furnished the permission granted by respondent No.1. Thereafter the appellant filed Writ Petition (L) No.27784 of 2022 against the letter dated 26.08.2022 before the Hon'ble High Court of Bombay, wherein by order dated 30.08.2022, action of respondent No.2 taken by order dated 26.08.2022 was stayed. Further it is submitted that Regulation 57 of the Development Control Regulations (DC Regulations) permitted the construction of temporary structures for a period of three years, a copy of which is annexed as Annexure-A-30. The meeting of respondent No.1 was scheduled on 12.09.2022 wherein the proposal of the appellant was to be placed but the same was placed without due intimation to the

appellant and direction/order which has been impugned herein has been passed without verifying the facts and hearing the appellant.

6. The grounds which have been mentioned from (a) to (ii) are nothing but repetition of the same facts, which have already been reproduced above by us.

7. As far as Appeal No.44 of 2022 is concerned, the facts, in brief, are as follows:-

8. The appellant is a partnership firm registered under the Indian Partnership Act, 1932 and engaged in the business of providing its property for film and television shootings. The appellant had entered into a Leave and Licence Agreement with P.S. Reddy and others in respect of the property bearing CTS No.1495, situated at village Erangal, Taluka Andheri – MSD, admeasuring 5000 sq.mtrs., which is still subsisting. The appellant applied for the permission for temporary structures to the police authorities i.e. Police Inspector in-charge of Kandivali Vahatuk Division for grant of NOC/permission for erecting temporary sets for shooting for a period of six months. The Senior Police Inspector, Malwani Police Station granted NOC/permission on 14.01.2021 for the said purpose. Respondent No.1 – MCZMA considered the appellant's proposal in its 152nd meeting for construction of temporary structure for film sets upon the property in question. Respondent No.2 – MCGM, vide letter/order dated 02.03.2021, allowed the appellant's application dated 11.01.2021 seeking shooting permission for temporary structures for the period from 12.01.2021 to 12.07.2021. Thereafter, respondent No.2, vide its letter/order dated 06.09.2021, extended the permission for erection of temporary shed for three months till 12.10.2021. By his application dated 11.10.2021, appellant addressed an application to respondent No.1 seeking requisite permission. Respondent No.2 by its letter dated 20.10.2021, after considering the appellant's proposal dated 18.10.2021

for extension of permission for continuing the temporary structure, recommended to respondent No.1 that the appellant's proposal be favourably considered and permission be granted. The appellant, vide letter dated 30.11.2021, informed respondent No.2 that the appellant had applied to respondent No.1 for the requisite permission/extension. However, as respondent No.1 had not been reconstituted yet the said application was undecided and pending adjudication. The appellant requested respondent No.2 to renew the permission. Respondent No.2, vide its letter/order dated 04.02.2022 allowed the appellant's application dated 12.10.2021 seeking shooting permission for temporary structures and granted/extended the permission till 12.04.2022. the Architect of the appellant addressed letter/application dated 11.04.2021 to respondent No.2, seeking film shooting permission for temporary structures on the property in question for a period of six months. The appellant's proposal for grant/extension of permission was listed at Item No.33 on the Agenda of respondent no.1's 159th meeting dated 06.06.2022. The appellant remained present for the said meeting through video conferencing. However, the matter was deferred to day-II of the meeting. The appellant remained present for hearing on day-II. The proposal of the appellant was accepted by respondent No.1. However, for the reasons best known to respondent No. 1, the minutes of day-III i.e. meeting held on 15.06.2022 were uploaded on the official website of respondent No.1 as minutes of meeting of day-II.. Respondent No.2, by order dated 21.06.2022 allowed the appellant's application dated 11.04.2021 seeking shooting permission for temporary structures till 12.10.2022. The appellant regularly followed up with the respondent No.1's office regarding this oversight/error, but no suitable response was received by him, which constrained him to address a letter dated 05.09.2022 seeking a copy of the minutes of the meeting of day-II from

respondent No.1. The copy of the said letter has been annexed as Annexure – A-20. Till date, the minutes of the meeting of day-II have not been communicated to the appellant, but the minutes have been discreetly uploaded upon the website of respondent No.1, which is annexed as Annexure – A-21. The minutes of the 159th meeting of day-II are also annexed as Annexure- A-22. Upon perusal of these minutes, it is evident that the appellant's matter was not recorded in the minutes of the meeting held on day-II at all, nor any reason was given for such omission. The appellant thereafter received a letter/order dated 13.09.2022 from respondent No.2, directing the appellant to remove the structures immediately. Thereafter the appellant filed Writ Petition (L) No.29442 of 2022 against the letter dated 13.09.2022 before the Hon'ble High Court of Bombay, wherein by order dated 16.09.2022, action of respondent No.2 taken by order dated 13.09.2022 was stayed. Further it is submitted that Regulation 57 of the Development Control Regulations (DC Regulations) permitted the construction of temporary structures for a period of three years, a copy of which is annexed as Annexure-A-26. The meeting of respondent No.1 was scheduled on 12.09.2022 wherein the proposal of the appellant was to be placed but the same was placed without due intimation to the appellant and direction/order which has been impugned herein has been passed without verifying the facts and hearing the appellant.

9. These appeals were taken up on 14.10.2022 and on that date, directions were issued for effecting the service upon the respondents. The service affidavit is on record, according to which the service is sufficient on all the respondents.

10. The stand taken by respondent No.1 – MCZMA is that the appellant's application for four nos. of temporary structures of film sets for shooting purpose at plot in question was considered by the answering

respondent in its meeting held on 24.02.2021 and the proposal was recommended on 24.02.2021 subject to following six specific conditions:-

> *"(i) The CRZ recommendation is valid for 6 months from the date of receipt of CRZ recommendation, as requested by the PP.*
> *(ii) Eco-friendly material should be used for installing the structures for film sets.*
> *(iii) Temporary structures should be built in CRZ II area only and not in CRZ I area.*
> *(iv) Debris generated during the project activity should not be dumped in CRZ area. It should be processed scientifically at a designated place.*
> *(v) After 6 months, the MCGM should submit a certificate to MCZMA confirming that the site is restored to it original conditions.*
> *(vi) After 6 months, PP may submit fresh reference for seeking CRZ recommendation, if required."*

11. It is further submitted that as per the approved CZMP of 2011, the land in question falls in CRZ-II area. In the meeting of the answering respondent held on 06.06.2022, the Project Proponent/appellant joined through video conferencing but could not show the details of the matter, therefore the matter was deferred to Day-II of the 159th meeting. Thereafter, in the 160th meeting, which was held on 12.09.2022, the answering respondent deliberated the matter along with the complaints received in the matter. The Authority granted permission for temporary structures of film sets for shooting purpose which was valid only for six months, which expired on 12.09.2022. The answering respondent had taken cognizance of the complaints which were sent along with the photographs and considered the same in its 159th meeting held on day-I and it was observed on the basis of evidence placed that instead of temporary film sets for shooting purpose, the film studios have been constructed on the site. The answering respondent had approved temporary permission for film shooting purpose granted by respective competent authorities at the scenic sites such as marine drive, Gate Way of India, Bandra Worli sea link, etc., which was valid only for six months

purely on temporary basis, which ended on 24.08.2021. As per the complaints, the film studio is in operation for which steel structures are erected instead of eco-friendly material which was the condition precedent at the time of granting recommendation and moreover there was mandatory condition to restore the site after six months and report of the same was expected from respondent No.2 – MCGM. However, no report was received. Therefore, in order to verify the same, respondent No.1 – MCZMA, vide letter dated 05.08.2022, requested DCZMA, Mumbai Suburban and MCGM to verify the matter and take action after examination. In the end, the answering respondent, after deliberation, decided that the application received from the side of the appellant for extension for CRZ recommendation deserves to be rejected from the CRZ point of view. Accordingly, a letter dated 30.09.2022 was issued to MCGM and DCZMA for action in the matter. Copies of the complaints along with photographs have been annexed as Annexure ”B” to the reply affidavit. It is also mentioned in this reply-affidavit that it was specifically mentioned under general conditions that respondent No.1 – answering respondent could revoke the recommendations, if the conditions stipulated were not complied with to the satisfaction of the MCZMA or Environment Department.

12. The stand taken by respondent No.2 – MCGM is as follows:-

The answering respondent had granted permission to the appellant for erecting temporary set/shed for shooting at the site in question after payment of necessary charges, for the period from 13.10.2021 to 12.04.2021 and further it was renewed second time till 12.10.2022. The appellant failed to produce NOC from MCZMA for renewal of permission, hence the answering respondent issued a letter on 26.08.2022 informing the appellant to produce clearance from the MCZMA. However, the appellant challenged the said letter before the Hon’ble High Court of

Bombay and the Hon'ble High Court granted interim relief on 30.08.2022. Thereafter again the appellant failed to produce NOC from MCZMA for renewal of permission, hence the answering respondent issued letter dated 13.10.2022 informing the appellant to stop the shooting activity and remove the temporary sets/sheds immediately.

13. The stand of respondent No.3 is as follows:-

The respondent No.2 – MCGM has granted permission to 3 studios, namely, Balaji Tirupathi Cinemas, Bhatia Bollywood Studios and Expressions Studios for making temporary film sets imposing certain conditions, which are enumerated in paragraph no.6 of the affidavit. The said permission was granted on 02.03.2021, which was periodically renewed and last permission was granted on 21.06.2022 upto 12.10.2022. These extended permissions of MCGM are completely illegal since they were granted without MCZMA's permission, which proved that the MCGM was supporting continuation of illegal studios. The MCGM has conducted an internal enquiry based on which they have decided to take disciplinary action against their own officers, which fact has been suppressed by the MCGM.

14. We have heard the arguments of the learned counsel for the appellants and respondent Nos.1 to 3 and perused the record.

15. The main thrust of the argument of the learned counsel for the appellants is that no opportunity of hearing was given by MCZMA before passing the impugned order dated 12.09.2022, which is in the form of minutes of meeting of respondent No. 1 – MCZMA whereby application for further extension/CRZ recommendation of the appellants was rejected based on several complaints along with the photographs having been received by MCZMA which were found to be correct. It was vehemently argued that MCZMA was required to give an opportunity to the appellants to rebut the said complaints but without doing so, it proceeded to take

the impugned decision causing enormous prejudice to the appellants, which needs to be set aside. In support of his submissions, learned counsel for the appellants relied on the following judgments:-

(i) Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others (1978)1 SCC 405

(ii) T. Takano Vs. Securities and Exchange Board of India and another; 2022 SCC OnLine SC 210

(iii) M/s Sesa Goa Limited Vs. State of Goa & Ors. 2013 SCC OnLine NGT 27

(iv) Prabha D. Kanan Vs. Indian Airlines Ltd. & Another (2006)11 SCC 67

16. In ***Mohinder Singh Gill and another*** (supra), in an Election Petition matter, the principle of natural justice was interpreted by the Hon'ble Supreme Court in the background which involved cancelling of poll and ordering a fresh re-poll. The Hon'ble Supreme Court interpreted that in such a situation, it is not necessary that notice should be given to all the members of the public. In electoral situations, if the Election Commission cancels a poll if it is satisfied that the procedure adopted has gone wrong in such a case, notice need not be given to any member of the constituency. It all depends on circumstances and the matter is incapable of generalisations. In a situation like the present, it is a far cry from natural justice to argue that the whole constituency may have to be given a hearing. It is sufficient if notice is given to the parties to the electoral dispute.

17. In ***T. Takano*** (supra), our attention is drawn to paragraph No.24, which reads as follows:-

> *"While the respondents have submitted that only materials that have been relied on by the Board need to be disclosed, the appellant has contended that all relevant materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and*

transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest. An identification of the purpose of disclosure would lead us closer identifying the extent of required disclosure. There are three key purposes that disclosure of information serves:

(i) Reliability: The possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also determining the veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter-arguments related to the information;

(ii) Fair Trial: Since a verdict of the Court has far reaching repercussions on the life and liberty of an individual, it is only fair that there is a PART C 24 legitimate expectation that the parties are provided all the aid in order for them to effectively participate in the proceedings;

(iii) Transparency and accountability: The investigative agencies and the judicial institution are held accountable through transparency and not opaqueness of proceedings. Opaqueness furthers a culture of prejudice, bias, and impunity – principles that are antithetical to transparency. It is of utmost importance that in a country grounded in the Rule of Law, the institutions adopt those procedures that further the democratic principles of transparency and accountability. The principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgement or order it passes. However, the duty to be transparent in the adjudicatory process does not begin and end at providing a reasoned order. Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process. It denies the concerned party and the public at large the ability to effectively scrutinise the decisions of the authority since it creates an information asymmetry."

18. In ***M/s Sesa Goa Limited*** (supra)**,** the learned counsel for the appellants relied on paragraph Nos.45 and 47, which read as follows:-

"45. Abuse of power and arbitrariness are two sides of the same coin. One triggers the other. The non-supplying of report, certain documents, non-application of mind, the content of the impugned order being beyond the scope of the show cause notice and non-

communication of material relied upon, seen in the light of the background that no inspection was conducted by the Authority concerned, leads us to come to the insuppressible conclusion that there has been denial of fair opportunity to the applicants. The principles of natural justice have been violated. Non-recording of reasons in regard to the grounds and material submissions regarding the same by the Authority further substantiates the view that the impugned order is unsustainable in law. We are unable to hold that the procedure adopted by the Authorities completely eliminates the element of arbitrariness or that of a capricious decision. Adherence to the principles of natural justice, as an indefeasible part of rule of law is of supreme importance, particularly when an Authority like Respondent No. 2 embarks upon determining the disputes between the parties or passes any administrative order/action involving civil consequences. We have no hesitation in coming to the conclusion that after the service of show cause notices, the proceedings and the impugned order are vitiated for the reasons afore-recorded.

47. The proposition of law advanced on behalf of the Respondent No.3 to a limited extent, may not be questionable. It is a settled canon of law that wherever the rules do not provide any specific procedure to be followed by the authority concerned while dealing with disputes and passing orders having civil consequences, it can adopt its own procedure. But equally true is that such procedure has to be in consonance with the principles of natural justice and the basic rule of law. The application of any procedure, in absence of specific provision of law, which infringes the principles of natural justice, cannot be sustained in law. Such procedure and the order passed upon such basis shall stand vitiated. As far as the merits of the present case are concerned, we have already returned a definite finding that there has been a serious violation of the principles of natural justice and the impugned order cannot stand the scrutiny of judicial review. The necessary corollary to the above discussion would be as to what will be the procedure that should be followed by the authorities in consonance with the principles of natural justice in absence of the prescription of any procedure in the Notification. Putting the allegations to the applicants by means of a notice, granting an opportunity to the affected party of being heard and recording of reasons while passing the orders are the fundamental essentials of the doctrine of audi alteram partem. So the authority must follow the procedure which would satisfy these basic ingredients before it can pass an order having civil consequences. Thus, we direct the authority to follow the following procedure while exercising its power in terms of the Notifications of 1991 and/or 2011:

> *(1) It must serve a notice to show cause, containing comprehensively all the acts/omissions/commissions which*

the affected party has committed, rendering it liable for any action in terms of the Notification.

(2) The affected party should submit its reply with complete documents to support the contents thereof, within the time prescribed in the show cause notice.

(3) The authority must furnish to the applicants, complaints, documents and/or any other material that it proposes to rely upon for the purposes of determining the controversy in issue.

(4) Wherever the records are voluminous and it may not be practical to furnish the copies of all such records, in that event the authority must provide an inspection of documents to the applicants and supply copies of such documents as the applicants may ask for, at his cost. Wherever the facts of the case require and the authority is of the view that the controversy can better be resolved by physical inspection of the site, then it must by itself or through such other appropriate high officer get the site in question inspected and furnish the inspection report to the affected party.

(5) The affected party should be provided a fair opportunity to put forward its case before the authority.

(6) After hearing the parties, the authority should pass a reasoned order. The order should deal, preferably with the grounds which have been raised by the affected party, as precisely as possible".

19. In ***Prabha D. Kanan (supra),*** our attention is drawn to paragraph No.42, which reads as under:-

"42. In Institute of Chartered Accountants of India (supra), it was stated:

"14. Our attention has been invited to the difference between the terms in which Section 21(3) and Section 21(4) have been enacted and, it is pointed out, that while in Section 21(4) Parliament has indicated that an opportunity of being heard should be accorded to the member, nowhere in Section 21(3) do we find such requirement. There is no doubt that there is that difference between the two provisions. But, to our mind, that does not affect the questions. The textual difference is not decisive. It is the substance of the matter, the character of the allegations, the far-reaching consequences of a finding against the member, the vesting of responsibility in the governing body itself, all these and kindred considerations enter into the decision of the question whether the law implies a hearing to the member at that stage."

It was further observed :

"17. It is then urged by learned counsel for the appellant that the provision of an appeal under Section 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under Section 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir William Wade's erudite and classic work on Administrative Law 5th Edn. But as that learned author observes (at p. 487), "in principle there ought to be an observance of natural justice equally at both stages', and
'If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.'

And he makes reference to the observations of Megarry, J. in Leary v. National Union of Vehicle Builders. Treating with another aspect of the point, that learned Judge said:

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

20. The learned counsel for the appellants has drawn our attention to page 397 of the paper-book of appeal No.43/2022, which is a part of policy document on film/T.V. serial/advertisement shooting permissions dated 01.03.2019, which has been issued by the MCGM, wherein the following has been read out by the learned counsel before us in open court:-

> *"The shootings for film/T.V. serial/advertisements may or may not involve erecting temporary structures. Requirements for erection of temporary structure and any other special requirement shall be captured in the common application form. Many a times the permission for such temporary structures are delayed, if approval from external authorities, other than MCGM are required like CRZ. The approval from other external agencies shall be obtained through state Single Window as per Govt. Notification under no. GOCHIN2016/Pra.Kra.189/Sa.Ka-1 dt. 22.05.2018. MCGM is only involved in the grant of permission for Film shooting as per the scope defined in the circular vie no. A.A./OD/970/Aa.Ja dt.16.10.2015.*
>
> *In current scenario, permission for temporary structure is granted by MCGM for non-commercial purpose.*
>
> - *Permission for temporary structures attract FSI and is being granted by MCGM only for labour camps/site offices/cement godowns, etc. which are required for construction of buildings.*
> - *Building Proposal department issues such permissions, which is renewable/revalidated every six months for an overall period not exceeding 3 years.*
> - *As per recommendation by DMC Zone – IV vide no.MDC/3241/OD dated 22.03.2018, the proposals for temporary structures in Film City used only for shooting cinemas, tele-serials, dramas etc, which fall under "commercial category" may be considered on similar ground.*
>
> *However, there is no clear policy on erection of temporary structure for Film Shooting. Currently permission for temporary structure is provided at ward level for short duration outdoor events in compliance with CFO guidelines."*

21. Based on above, it is argued that such kind of temporary structures were permissible under this policy which could be extended

upto 3 years, but without proper opportunity of hearing being given to the appellant, the extension permission has been declined and direction has been issued to it to remove the structures.

22. We find that the above policy which has been cited by the learned counsel for the appellants clearly shows that the same is laid down for non-commercial purpose, but here in the present matter, the permission for setting up temporary sheds/sets for shooting purpose is clearly for commercial purpose. Therefore, how these guidelines would be applicable is not understandable.

23. Our attention is also drawn by the learned counsel for the appellants to the Govt. Resolution dated 22.05.2018 passed by the State of Maharashtra, Tourism Department, which lays down single window for consideration and issuing permission for shooting and that any application made under it needs to be cleared within seven days.

24. To us, it appears that the said argument is not based on sound principle because bare perusal of the said Govt. Resolution would indicate that the same is meant for shooting permission to be granted and not for setting up structures/sets/temporary studios for shootings.

25. One more important area on which the learned counsel for the appellant has argued is that respondent no.3 is ex-Member of Parliament and has special grievance against the appellant but he has no grievance against other persons who were too granted such temporary permissions which is evident from the fact that there are large number of temporary studios in the area in question; but he has made complaint only against the appellants' temporary structures. Therefore, his complaint needs to be ignored.

26. From the side of respondent No.1 – MCZMA, the learned counsel has brought our attention to page 284 of the paper-book, which contains the minutes of 159th meeting of the MCZMA held on 06.06.2022 wherein

at item No.35, the appellant's matter was considered and it is indicated in these minutes that the Project Proponent had joined the meeting through video conference but he could not present the details of the matter, which clearly indicates that he was given sufficient opportunity to place his defence in the present matter and it cannot be said to be a case where he was not given an opportunity of being heard and that principles of natural justice have been violated. Besides that, he has also indicated that the impugned order has been passed which is contained at pages 35 and 36 whereby only temporary permission has been granted for six months and on expiry of that period, as per the terms and conditions laid down therein, the Project Proponent/appellant was supposed to restore the area to its original position before seeking fresh permission for temporary construction of the sets/studios. It is argued by him that there is admission on the part of the appellant that he never demolished the structure/restored the place to its original position after lapse of six months as he kept on seeking extensions of the permission from time to time, which is nothing but blatant violation of condition No.5 stipulated in the permission granted.

27. Further it is argued that the Project Proponent was supposed to approach this Tribunal with clean hands saying that he had not demolished the earlier set up/temporary structure but he concealed the same and therefore, the principles of natural justice would not be applicable in this case. In support of his submission, the learned counsel for respondent No.1 relied on the judgment in the case of ***State of U.P. Vs. Sudhir Kumar Singh and others; 2020 SCC OnLine SC 847*** and particularly paragraph 39 thereof, which reads thus :-

> *"39. An analysis of the aforesaid judgments thus reveals:*

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

28. From the side of respondent No.2 – MCGM, the learned counsel has argued mainly that the circular dated 01.03.2019 under which temporary permission was granted to the appellant was found to consist several inconsistencies which were pointed out by the Enquiry Officer, pursuant to which all such permissions issued under the said circular were directed to be put on hold immediately and that it was ordered that further necessary action may be taken to clear all the temporary structures which are still in existence following due process of law and no further permission shall be given until further orders. An order to this effect has been passed by the Additional Municipal Commissioner (City)

of Brihanmumbai Municipal Corporation on 23.11.2022, which is filed by respondent No.3 at page 490 of the paper-book. To the above letter/direction, the learned counsel for the appellants rebutted by saying that the same has been issued in violation because there was a direction from this Tribunal to maintain status quo. Such kind of order could not have been issued by the Authority concerned as status quo was directed to be maintained with respect to the structure/property on the site in question.

29. In view of above communication dated 23.11.222, it has been vehemently argued by the learned counsel for respondent No.2, which has been supported by the learned counsel for respondent No.1 also that now the appellants cannot be granted any further permission for temporary structure to be set up for shooting purpose.

30. From the side of respondent No.3, the main emphasis has been laid, through argument, on the fact that there is no violation of principles of natural justice in this case as the appellants have not come with clean hands. To substantiate this submission, the learned counsel for respondent No.3 has relied on the judgment in the case of ***Karnataka Public Service Commission and others Vs. B.M. Vijay Shankar and others; (1992)2 SCC 206***. The issue to be resolved in this case was, "Does the rule of natural justice have no exception? Is denial of opportunity of hearing, in every circumstance, arbitrary?" The answers to these questions were sought by the State of Karnataka and the Public Service Commission, through the appeals preferred before the Hon'ble Apex Court as they were aggrieved by the directions issued by the Karnataka Administrative Tribunal to get the answer books of the candidates evaluated, who in the competitive examinations conducted by the Commission for the State Civil Service for categories `A' and `B' post,

were guilty of writing their roll numbers not only on the front page of the answer books, in the space provided for it, but even at the other pages in disregard of instructions issued by the Commission. Basis for the direction was failure of the Commission to afford an opportunity to the candidates to explain their bonafides and innocence . It was arbitrary and entailed grave consequences for those aspirants for entering into public service. The answer of this question contained in paragraph No.4 of the judgment as follows :-

> *"4. Was natural justice violated ? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bonafide or innocence but for being otherwise 673 arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment."*

31. After hearing the learned counsel for the parties and having perused the evidence on record and having gone through the case-law, which is relied upon by the learned counsel for the appellants and the respondents , we are of the opinion that the main grievance which the appellants have shown in the present matter is that before passing the impugned order, declining the extension of temporary tents/sheds for shooting purpose to be allowed to be continued for another six months, opportunity of hearing was not given, because whatever complaints were made by respondent No.3 or any other person along with photographs

were not provided to him before taking the said decision at the end of MCZMA, which is violation of principles of natural justice. We are not in agreement with this argument because in 159th meeting of MCZMA, it is clearly recorded that the Project Proponent was allowed to appear through video conferencing and opportunity of hearing was given to him in the matter in question, though the final decision was not taken in the said meeting rather the same was taken in the next meeting, which would certainly indicate that on subsequent date, he was not required to be given opportunity of hearing again. We are of the view that it would not cause any prejudice to him as he was already granted opportunity of hearing in the earlier meeting.

32. As regards the judgments, which have been relied by the learned counsel for the appellants, we have no quarrel with the law laid down in those judgments, but the question here is that we are already of the view that enough opportunity of hearing was given to the appellant, but he did not avail of it as he was heard through video conferencing during second meeting i.e. 159th meeting of MCZMA on day-II while the order was delivered in its meeting of day-III. Only because he was not heard on day-III does not mean that he was not given an opportunity of hearing.

33. We also find that the permission which was granted in the present case by the MCGM in conjunction with the MCZMA was only for setting up temporary structure for the purpose in question but instead of doing that the appellants have set up huge structures in which lot of steel and concrete material has been used which appears to be of permanent nature to us after having a look at the photographs which have been annexed by respondent No.1. In our assessment, such structures cannot be held to be of temporary nature by their size and the material used therein, although from the side of the appellants it is being stated that

these structures were prepared by eco-friendly material, therefore, they should be treated to be of temporary nature. We are not in agreement with this argument and find that these kind of structures itself only show violation of the grant of temporary permission given by respondent No.1. We further find that as per the permission, the structure was to be set up for six months and thereafter, the same had to be removed so much so that the place has to be restored to its earlier position and thereafter only subsequent permission could have been applied. In this case, there is blatant violation on the part of the appellants because they did not remove the structures in question before moving further application for granting temporary permission for raising construction. This is in total violation of the temporary permission granted to the appellants. Therefore, a person coming with gross violation of the directions issued to him, cannot claim the infringement of the principles of natural justice.

34. Moreover, as on date, from the side of respondent No.2 – MCGM, it has been clearly stated that the circular dated 01.03.2019 under which the appellants were granted permission for raising temporary structures for the purpose in question has already been stayed until further orders by virtue of order dated 23.11.2022 passed by the Additional Municipal Commissioner (City), Brihanmumbai Municipal Corporation, which we have cited herein-above. Therefore it is evident that no such permission can be granted as is being prayed by the appellants.

35. In view of above facts and legal position, we do not find any force in these appeals, which deserve to be dismissed and are accordingly dismissed.

36. In view of dismissal of the appeals, all pending Interlocutory Applications stand dismissed.

37. No order as to cost.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

APRIL 06 , 2023
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