

(2025) 12 GAU CK 0024

Gauhati HC

Case No: WPC Of 444 Of 2025

Bharat Saikia And 9 Ors

APPELLANT

Vs

State Of Assam And 11 Ors

RESPONDENT

Date of Decision: Dec. 11, 2025

Hon'ble Judges: Sanjay Kumar Medhi, J

Bench: Single Bench

Advocate: R. Baruah, N.M. Dutta, M. Barman, B. Choudhury, S. Baruah, D. Gogoi, B.P. Borah

Final Decision: Disposed Of

Judgement

Sanjay Kumar Medhi, J

1. Heard Shri R. Baruah, learned counsel for the petitioners and Ms. M. Barman, learned State Counsel, Assam. Also heard Shri B. Choudhury, learned Standing Counsel, Agriculture Department; Shri S. Baruah, learned Standing Counsel, Pollution Control Board (PCB); Shri D. Gogoi, learned Standing Counsel, Forest Department and Shri B.P. Borah, learned counsel for the respondent no. 12.

2. The petitioners have put to challenge an order dated 19.12.2024 issued by the District Commissioner, Morigaon whereby the NOC dated 02.09.2011 for establishment of a brick kiln by the respondent no. 12 has been restored.

3. There is a chequered history, including history of litigations on the aforesaid issue of establishment of the brick kiln in questions.

4. Though various points have been canvassed on behalf of the petitioners which are also refuted by the learned counsel for the respondents, more particularly, the respondent no. 12, one of the points of argument advanced is that while the aforesaid impugned order dated 19.12.2024 has been passed by the District Commissioner, Morigaon, the hearing was not conducted by him but by the Addl. District Commissioner, Morigaon.

5. This Court has carefully perused the impugned order vis-a-vis the order dated 27.09.2024 passed by this Court in the last round of litigation i.e. WP(C)/1942/2024. In the said order, the following directions were given:

13. Taking into account the above, this Court disposes of the instant writ petition with the following observations and directions:-

(i) The Pollution Control Board of Assam is directed to submit a fresh report as regards the respondent No.12 Brick Kiln within a period of 4 (four) weeks from today and not later than 23.10.2024 before the District Commissioner, Morigaon.

(ii) The District Agricultural Officer is also directed to submit a fresh report to the District Commissioner, Morigaon in respect to the land wherein the respondent No.12s Brick Kiln is established within 23.10.2024.

(iii) It is also seen from the impugned order dated 19.02.2024 that the reports of the Circle Officer, Morigaon Revenue Circle as well as the Divisional Forest Officer, Nagaon Division have already been submitted, and as such, there would be no further necessity of submission of any further report(s).

(iv) This Court directs that upon receipt of the said reports as above mentioned the District Commissioner, Morigaon shall fix a date for hearing the petitioners and the respondent No.12. This Court directs that the petitioners and the respondent No.12 be heard before issuing any order. The District Commissioner, Morigaon, if deems necessary may call the concerned officials for arriving at a decision. The entire exercise be completed within 4 (four) weeks from 23.10.2024.

6. From the aforesaid directions, it appears that amongst other aspects, the District Commissioner, Morigaon was directed to give an opportunity of hearing to the petitioners and the respondent no. 12. There is a specific averment in paragraph 38 of the writ petition that the hearing was done by the Addl. District Commissioner, Morigaon and not by the District Commissioner, Morigaon whereas the impugned order has been passed by the District Commissioner, Morigaon. There is no rebuttal of the aforesaid pleadings. To the contrary, as per the writ instructions dated 08.04.2025 issued by the concerned District Commissioner to the learned Addl. Sr. Govt. Advocate, Assam, the said position has been accepted with the only justification that the hearing was done on 25.11.2024 by the Addl. District Commissioner (Revenue) as per the instructions and authorization of the District Commissioner.

7. This Court is of the considered opinion that without going to the other aspects of challenge, it clearly appears that the impugned order has been passed in a manner which is not permitted in law. When this Court, vide the order dated 27.09.2024 had directed a hearing to be given to the petitioners and the respondent no. 12 by the

District Commissioner, Morigaon, the said hearing could not have been delegated to any other Officer when the final order is passed by the District Commissioner himself. Such a proceeding would be against the Rule of law and would be in violation of the principles of natural justice. Such practice would be against the doctrine of fairness in administrative action. In this connection, it would be gainful to refer to certain observations made by the Honble Supreme Court in the case of Automotive Tyre Manufacturers Association Vs. Designated Authority & Ors., reported in (2011) 2 SCC 258. Such observations were made after referring to the landmark cases on the subject.

77. It is trite that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In A.K. Kraipak (supra), it was observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application.

81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. (See: Union of India Vs. Col. J.N. Sinha & Anr. (1970) 2 SCC 458.)

83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses etc. and also clear up his doubts during the course of the arguments. Moreover, it was also

observed in Gullapalli (supra), if one person hears and other decides, then personal hearing becomes an empty formality.

8. In view of the above, the impugned order dated 19.12.2024 is interfered with and the matter is remanded back for a fresh consideration strictly in terms of the earlier direction dated 27.09.2024 passed by this Court in WP(C)/1942/2024.

9. The aforesaid exercise is directed to be conducted and disposed of by passing a speaking order which is required to be communicated to all the stake holders. The same may be done within a period of 45 days from today.

10. Status quo, as on today, is directed to be maintained till such speaking order is passed.

11. The writ petition accordingly stands disposed of in the terms indicated above.