IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-91-2020

Xavier Fernandes & Anr. ... Petitioners

Versus

State of Goa & Ors. ... Respondents

Shri A. Kakodkar, Advocate for the Petitioners.

Ms. Ankita Kamat, Additional Government Advocate for the Respondents No.1 & 2.

Shri Nigel Da Costa Frias, Advocate for the Respondents No.4 & 5.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 17th August 2020

ORAL ORDER :

Introduction:

A complaint received, the Institution of Lokayukta acts on it. After the preliminary inquiry, it desires that some other persons, too, must be added to the proceedings so it can decide the questions in the complaint effectively and completely. Exercising its *suo motu* power, the Lokayukta adds those persons as the additional respondents. Now, these newly added parties assert that their inclusion without notice violates the principles of natural justice. Does it?

2. The question is, should the Lokayukta have notified and heard the additional respondents before it added them to the proceedings?

Facts:

3. In this writ petition, the dispute concerns the addition of parties in the proceedings pending before the Lokayukta. So we will narrate the facts as are essential for this Court to appreciate whether

the Lokayukta has followed the prescribed procedure to add the parties *suo motu.*

4. There came a complaint before the Lokayukta about the illegalities allegedly committed by a Gram Panchayat. From the beginning, the Sarpanch and Deputy Sarpanch have been on record as the respondents. The allegations revolve around the shifting of a bar license from one house to another and issuing of an NOC for running a general store in that house. The house to which the bar license was shifted and to which NOC was granted for running a general store, in the Lokayukta's *prima facie* observation, is an illegal structure. It belongs to the Sarpanch.

5. The authorities initiated no action, though the complainants brought the illegalities to their notice. So the aggrieved persons complained to Lokayukta. The beneficiary of the illegal acts is said to be the very Sarpanch. At the preliminary stage, the Lokayukta has found the complaint as neither frivolous nor vexatious. Instead, it has found sufficient and reasonable grounds to proceed further. Besides, it has found that some panchayat members helped the Sarpanch, by passing a resolution within no legal basis.

6. Therefore, Lokayukta invoked Rule 9 of the Goa Lokayukta Rules 2012 ("the Rules") and "deemed just and proper to add the panchayat members" as Respondents 3 to 6 for its deciding "effectively and completely the question involved". After adding those panchayat members as the additional respondents, Lokayukta directed notice to them under Section 13 (1) of the Goa Lokayukta Act 2011 ("the Lokayukta Act").

7. Now, the newly added respondents have filed this writ petition questioning, as they call, the procedural impropriety in Lokayukta's adding them as parties to the proceedings.

Submissions:

Petitioners:

8. The arguments summarised, Shri A. Kakodkar, the learned counsel for the petitioners, submits that the Lokayukta has brought the petitioners on record as the respondents without notice to them. According to him, Lokayukta's order, dated 09.03.2020, offends the principles of natural justice. Shri Kakodkar, stresses, first, that Section 12 provides an opportunity of hearing to the respondents during the preliminary inquiry. Though the expression used is 'may', it shall be read as 'shall'. If the Lokayukta, Shri Kakodkar points out, finds the complaint frivolous, it does not proceed with the main investigation. That is, it discharges the respondent. Now, the petitioners have missed out on that step for lack of notice.

9. Second, Shri Kakodkar also contends that Rule 9 of the Rules requires the Lokayukta to follow the procedural safeguards as set out under Rule 10 of Order I of CPC in impleading a person. According to him, the Lokayukta's *suo motu* power to add parties finds no exemption from the grasp of the natural justice. Therefore, pre-impleadment notice must be read into the procedure even under Rule 10 of Order I of CPC. To support his contentions, Shri Kakodkar has relied on many decisions. Some are, supposedly, in the petitioners' favour; some are not. But he has cited them, too, to distinguish their holding. From out of these copious decisions, the respondents' counsel have picked some to support their contentions.

10. So I will cite all those decisions at one place: (1) *Star Light Credit (India) Ltd. v. Robin Gupta*[1], (2) *Walchandnagar Industries Ltd. v. Saraswati Industrial Syndicate Ltd.*[2], (3) *Tulsidas P. Kheraj v. Association*

1 2012 (128) DRJ 75

2 (2011) 178 DLT 768 (DB)

of Engineering Workers[3], (4) *Robust Hotels (P) Ltd., v. E.I.H. Ltd.*[4], (5) *Mumbai International Airport Pvt., Ltd. v. Regency Convention Centre & Hotels Pvt., Ltd.*[5], (6) *Ashwani Kumar v. Sanjay Kumar*[6], (7) *Ch. Rama Rao v. The Lokayukta*[7], (8) *P. Arumugha Gounder v. R. Adhinarayanan*[8], and (9) *Bhimavarapu Venkateswara Reddi v. Vanga Rami Reddi*[9].

Respondents:

11. Shri Nigel Da Costa Frias, the learned counsel for the respondents no.4 & 5, who are the original complainants, has joined the issue on all points the petitioners' counsel has advanced. He has submitted that there is no question of natural justice violation. To elaborate, he submits that once the petitioners enter appearance before Lokayukta, they can articulate all their pleas and convince the Institution why they should not be proceeded against. Thus, according to Shri Costa Frias no prejudice is caused to the petitioners, either.

12. In the end, Shri Costa Frias has tried to distinguish all the decisions the petitioners have cited and, in fact, tried to take advantage of a few.

13. Heard Shri A. Kakodkar, the learned counsel for the petitioners, Ms. Ankita Kamat, the learned Additional Government Advocate for the respondents no.1 & 2 and Shri Nigel Da Costa Frias, the learned counsel for the respondents no.4 & 5.

Discussion:

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3 2001 (3) MhLJ 572

4 (2010) 6 CTC 192

5 (2010) 7 SCC 417

6 MANU/HP/0194/2019

7 AIR 1996 SC 2450

8 (1963) 76 LW 796

9 (1971) 2 AP LJ 55

14. Indeed, in pending proceedings before it, the learned Lokayutka desired to add a couple more persons as the respondents. By then, it has had a preliminary view on the complaint. It has, as the record reveals, examined much material, and opined that those persons, the panchayat members, must be brought on record. So it exercised its *suo motu* powers and added them to the array of the respondents.

15. In other words, as the statutory mandate goes, the Lokayuta has appreciated the facts in the complaint, examined the material before it, and felt that the petitioners' presence before it is necessary for it to decide effectively and completely the question involved in the complaint.

The Question:

16. In the above context, the only question that requires an answer is this: Should the Lokayuta have heard the petitioners before it brought them on record? That is, should the petitioners have had a pre-impleadment notice to explain to the Lokayutka why their presence is unnecessary in the proceedings? The corollary is, has the Lokayuta's order of adding the petitioners as parties to the proceedings suffer from the vice of violating the principles of natural justice? If I may add, to what extent does Rule 10 of Order I of CPC control the Lokayukta's procedural freedom? And if at all it does, what is the scope of Rule 10 of Order I in preserving the all-pervasive principles of natural justice?

The Statutory Scheme:

Goa Lokayukta Act 2011

17. Goa Lokayukta Act provides for "the establishment of the Institution of Lokayukta to inquire into grievances and allegations against public functionaries in the State of Goa". Section 9 of this Act enumerates the matters the Lokayukta or the Upa-Lokayukta could investigate. And Section 10 specifies the matters that fall beyond the

Institution's investigative purview. Sections 11 to 15 are essentially procedural, whereas Section 16 refers to the Institution's investigation report. Section 16A deals with the fallout to the report under Section 16.

Procedurally What Binds Lokayukta?

18. Here, we should marshal the facts, apply the law and precedents, and rule on the dispute keeping in view these things: (1) Lokayukta is a quasi-judicial authority operating under a particular statute, with a specific objective; (2) it can regulate its own procedure; and (3) the petitioner's addition to the proceedings is at the Lokayukta's own behest—*suo motu.*

19. The Lokayukta sets out to investigate under three circumstances: (1) On a Government's reference under Section 9(2); (2) on a Complaint by any person other than a public functionary; and (3) *suo motu.* Section 12 deals with preliminary inquiry. First, it will ascertain whether there exists a reasonable ground for it to investigate the allegation. That is, it may refuse to investigate if (a) the complaint is frivolous or vexatious or *mala fide*, (b) there are no sufficient grounds for it to proceed, or (c) the complainant has more efficacious remedies available. The procedure the Lokayukta should adopt, as Section 12 (2) mandates, is "such as the Lokayukta or Upa-Lokayukta deems appropriate in the circumstances of the case". If it deems necessary, Lokayukta can "call for the comments of the public functionary concerned". This calling for comments at the preliminary stage, I must note, is only discretionary or optional.

20. Section 13 prescribes the procedure for a detailed investigation. After the preliminary inquiry under section 12, if the Lokayukta finds reasonable grounds for a detailed investigation, it "shall forward a copy of the complaint, along with its enclosures to the public functionary and the competent authority concerned". Then, it

indulges in a detailed investigation. Only during this detailed investigation should the Lokayukta allow the public functionary concerned to offer his comments on the complaint. Indeed, as sub-section (3) mandates, "the procedure for conducting any such investigation shall be such as the Lokayukta … considers appropriate in the circumstances of the case". That is, the Institution has all the powers to regulate its own procedure. Of course, both the public functionary and the complainant, if any, may participate *pro se* or through a counsel. And in every detailed investigation, the Government must be a party, with a right to be represented by a counsel.

21. Besides, the Lokayukta, too, as Section 13 (6) allows, can have the assistance of a counsel. It may, at any stage allow 'any witness' or 'any other person' to participate in the proceedings as it thinks fit. As to the search, seizure, or warrants, the Cr PC will apply. During the investigation, preliminary or detailed, the Lokayukta shall have all the powers as if it were trying a suit under the Code of Civil Procedure. Of course, this deeming provision applies to the procedural steps enumerated in Section 15 of the Act.

22. Section 32, on the other hand, deals with the Lokayukta's rule-making power. With the Government's prior approval, it may make regulations, among others, prescribing "the procedure which may be followed by [it] for conducting proceedings including enquiries and investigation". Again, evidently, Lokayukta has not been shackled by the procedural hassles prescribed elsewhere. It is a tribunal to trounce graft; efficacy and expediency take precedence over procedural rigmarole. It regulates its own procedure, and that procedure must conform to the principles of natural justice. As the adjudicatory aphorism asserts; justice, equity, and good conscience guide its procedure.

Goa Lokayukta Rules 2012:

23. Now, let us examine the Goa Lokayukta Rules, 2012. It will suffice if we consider Rules 7 and 9. Under Rule 7, for investigating or inquiring into allegations, the Lokayukta will have the powers as vested in a Civil Court while trying a suit under the Code of Civil Procedure. This power allows the Lokayukta to grant, among others, injunctions, commissions for local inspection, and so on.

24. The pivotal provision for us is Rule 9. Rule 9 allows the Lokayukta to strike out or add parties. The provision reads:

> 9. Power to strike out or add parties.— The Lokayukta or Upa-Lokayukta may, at any stage of the proceeding in a complaint, either suo-motu or on application, delete the name of any party improperly joined or, add as party any person who ought to have been joined or whose presence before the Lokayukta or Upa-Lokayukta is felt necessary in order to enable the Lokayukta or Upa-Lokayukta, to decide effectively and completely the question involved in any complaint and the provision of rule 10 of Order I of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), shall, as far as may be, apply to such deletion or addition of parties.

25. This adding or deletion of a party can be at the instance of a party to the proceedings or *suo motu*. It can delete the name of any party improperly joined or add as a party any person who ought to have been joined or whose presence before the Lokayukta is necessary. This necessity is to enable the Lokayukta to decide effectively and completely the questions involved in any complaint. And Rule 10 of Order I of CPC shall, as far as may be, apply to such deletion or addition of parties.

26. Summed up, the Lokayukta may add or delete a party. The deletion suggests a party has been improperly added; the addition presupposes that the party's presence is necessary for a complete and effectual disposal of the complaint. For either deletion or addition, Rule 10 of Order I applies. The last part of the provision is curiously worded. It says Rule 10 of Order I "shall" apply, but this legislative

mandate gets qualified by the expression "as far as may be". "Shall" and "as far as may be" are, to me, strange bedfellows. "Shall" and "as far as may be" are, to me, strange semantic bed fellows. After all, "shall" is a drafter's delight and an interpreter's nightmare.

27. So, let us see, to what extent Rule 10 of Order I applies. Sub-rule (1) of Rule 10 deals with "suit in name of wrong plaintiff". Then, sub-rule (2) deals with addition and deletion of parties. At any stage of the proceedings, either upon or without a party's application, a court may delete the name of a party improperly joined as plaintiff or defendant. On the converse, it may also add any person as plaintiff or defendant. This addition requires that the court must have felt that person's presence as necessary "to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit". The rest of this provision does not help our discussion. Rule 9 of the Goa Lokayukta Rules refers to Rule 10 of Order I to underline the procedural parity in the addition or deletion of the parties both before a civil court and the Lokayukta.

28. That said, neither Rule 9 of the Goa Lokayukta Rules nor Rule 10 of Order I, CPC, requires a pre-impleadment notice to the proposed party. Then, what is the established practice, if there is one, in this regard?

29. The petitioners argue that before the preliminary inquiry under Section 12 of the Act, every respondent gets notified. So he can appear before Lokayukta and object to the proceedings against him. Now that stage is over. Without pre-impleadment notice, the petitioners have been deprived of the advantage they could have had under Section 12 of the Act. So goes the line of argument.

30. I am afraid this contention contains no merit. Under Section 12, the Lokayukta may "make such preliminary inquiry as he deems fit". It is "for ascertaining whether there exists reasonable ground for [his]

conducting an investigation." The tenor of the provision reveals that the preliminary inquiry is optional, but if it takes place a finding on the nature of the complaint is mandatory. As to the procedure to be adopted in the preliminary inquiry, sub-section (2) provides the answer. The procedure "shall be such as the Lokayukta or Upa-Lokayukta deems appropriate in the circumstances of the case". Indeed, if—only if—the Institution "deems it necessary", it will "call for the comments of the public functionary concerned." Therefore, the notice before the preliminary inquiry, as contended by the petitioners, cannot be mandatory, and 'may' cannot be read as 'shall'.

31. In fact, the preliminary inquiry under the Andhra Pradesh Lokayuta Act (referred to by the petitioners' counsel) is more onerous and fraught with more drastic consequences. But even in the context of that statue, the Supreme Court has held in *Ch. Rama Rao* (as discussed below) that no notice is required.

32. Now, we may turn to the decisional dynamics on the issue. At the bar, the learned counsel on either side have cited a host of decisions to persuade me on the need, or the lack of it, to issue notice to the proposed party. Let us examine them.

Decisions:

Decisions:

(a) *Star Light Credit*:

33. In *Star Light Credit*, the respondent company, as the petitioner before the CLB, applied to bring the appellant on record as a respondent. It has also sought the CLB's leave to amend its pleadings. The CLB allowed both the application—without notice to the appellant company. Thus brought on record as a respondent, the appellant company challenged the CLB's orders before the High Court of Delhi. The amendment introduced the plea that a part of the shareholding was transferred to the appellant company. That amendment allowed,

the appellant company was brought on record only as a consequence. *Star Light Credit* has followed the same Court's Division Bench decision in *Walchandnagar Industries Ltd.*, and repelled the appellant's contention that the CLB should have notified it before it has brought the appellant on record as a respondent. So we must examine *Walchandnagar Industries*.

(b) *Walchandnagar Industries*:

34. In *Walchandnagar Industries*, the first respondent sued the second respondent for perpetual and mandatory injunctions. It was on the premise that the second respondent has been interfering with its contract and also trying to replace it with the appellant. In the written statement, the second respondent has conceded on the plea of the first respondent's proposed replacement. So the first respondent amended the pleadings and brought on record the appellant. But before allowing the appellant's impleadment, the Delhi High Court, on its original side, has not notified the appellant. Aggrieved, the appellant took the matter in an intra-court appeal.

35. As to the impleadment, *Walchandnagar Industries* has noted that the suit was one of tortuous interference and conspiracy. So the alleged co-conspirator, who is also the beneficiary, is not only proper but also a necessary party. According to it, the amendment allowed, "there can be no two opinions that an injustice would be caused to *Walchandnagar Industries* if it were not be impleaded since there is always a likelihood of an order being passed which may be adverse to its interests."

36. According to *Walchandnagar Industries*, Order I Rule 10 of the CPC permits a person's impleadment if his presence is essential for the court to determine the real matter in dispute. In other words, the necessary party's absence will have a deleterious consequence: it non-suits the plaintiff for non-joinder of the necessary party.

Walchandnagar Industries, as I understand, pursued the plaintiff's perspective; it has not dealt with why the proposed party need not be put on notice before it is brought on record. A party would safely expect to be notified, as the petitioners contend, before he was pushed into the arena of litigation, gratuitously.

37. This Court in *Tulsidas P. Kheraj* and the Madras High Court in *Robust Hotels (P) Ltd.*, have taken a view that pre-impleadment notice is necessary. If we refer back to *Star Light Credit*, there the learned Single Judge disagrees with the holding of these two cases on the premise they did not deal with what prejudice the proposed party would suffer if it had no pre-impleadment notice. So let us examine those two decisions.

(c) *Robust Hotels:*

38. In *Robust Hotels*, the entire discussion was on who could be a necessary party to a suit, and what entails that necessary party's presence or absence. There is, thus, little discussion on pre-impleadment notice. But in paragraph 22 of the judgment, the judicial directive of the Madras High Court's Division Bench is unmistakable: a new party's impleadment is not automatic. If the plaintiff applies to add a defendant, notice should be issued to the proposed defendant and he should be heard before impleadment. It is inadequate to hear him after impleading. The proposed party should be heard in opposition to the Application for impleadment. I must, with respect, note that paragraph 22 is with little elaboration.

(d) *Tulsidas P. Kheraj:*

39. *Tulsidas P. Kheraj* prefaces its disposition with an all-revealing observation that the petition "reflects how the process of law and the Court can be abused to harass a party which is *ex-facie* neither necessary nor a proper party to the litigation." There, the respondent Union complained against its employer. A decade later, the petitioners

were impleaded. As the petitioners had not been heard before they were impleaded as the respondents, they applied to the Industrial Court for discharge, but it refused to discharge them. The refusal was on the jurisdictional grounds.

40. On facts, *Tulsidas P. Kheraj* has observed that the petitioners are the owners and the structure was given on lease to the employer, a proprietary concern. Thus, the petitioners "had absolutely no concern" with the employer's business and with the industrial dispute. Yet the petitioners were dragged into the complaint of unfair labour practice. In this context, this Court, per R.J. Kochar, J., has observed that the petitioners have rightly applied to the Industrial Court for their discharge from the proceedings on the premise that "they were wrongly impleaded under the ex parte order dated 1-2-1994 qua them without hearing them". *Tulsidas P. Kheraj*, too, does not explicitly deal with pre-impleadment notice.

41. In a suit for partition, the petitioner was impleaded as 175th respondent. As the trial Court did not notify him before the impleadment, the petitioner challenged the order. The High Court of Karnataka, per S. Sujatha J., in *Gunadhar Muttin v. Shantinath*[10], has held that under Order I, Rule 10 of CPC, "it is hardly required to be stated that the proposed defendant has to be put on notice before passing any order on the application filed by the plaintiff for impleadment of such parties." Thus, *Gunadhar Muttin* has treated the order of impleadment as irregular for want of pre-impleadment notice. This decision, too, I may respectfully note, has supplied no reasons to read into Order I, Rule 10 the necessity of a pre-impleadment notice.

(e) *Mumbai International Airport:*

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10 Decided on 10 October 2018

42. In *Mumbai International Airport Pvt., Ltd.*, the Supreme Court, per R. V. Raveendran J., has distinguished between the necessary party and property party. It has considered the scope and ambit of Order I of Rule 10(2) CPC and held that the "sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding." The discretion under the sub-rule, according to it, can be exercised either *suo motu* or on any party's application. The court can strike out any party who is improperly joined; it can also add anyone as a plaintiff or as a defendant if it finds he is a necessary or proper party. "Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose". In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

43. *Mumbai International Airport* lucidly exemplifies when and how the impleadment takes place and what follows the impleadment or non-impleadment. One such example is this: If a plaintiff applies to implead a person as a defendant on the grounds that he is a necessary party, the court may implead him under Rules 9 and 10(2) of Order I. But if the claim against that person is barred by limitation, the court may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

44. Another example *Mumbai International Airport* provides is this: A person may apply to court for being impleaded on the premise he is a necessary party. If the court finds he is a necessary party, it can implead him. In that process, if the plaintiff opposes such impleadment, then instead of impleading the party found to be a necessary party, the court may dismiss the suit for the absence of the necessary party. Shri Costa Frias wants us to infer from *Mumbai International Airport* that

pre-impleadment notice is not a statutory imperative; at best, it lies in the court's discretion.

(f) *Ashwani Kumar:*

45. In *Ashwani Kumar*, the plaintiff sued the sole defendant. Later, based on the defence taken in the suit, he applied under Rule 10 of Order 1 CPC to add another person as the second defendant. That application was allowed. The newly added defendant, then, challenged his addition without prior notice as procedurally flawed.

46. The High Court of Himachal Pradesh, *per* Ajay Mohan Goel J, has observed that a party's addition to the proceedings can be either on a party's application or *suo motu* by the Court. On facts, it has noted that the addition was at the plaintiff's behalf. Then, *Ashwani Kumar* has, to quote its own words, "purposely" used the expression "in the fact of present case" in its disposition. For its ruling is fact-specific. That apart, *Ashwani Kumar* has held thus: "[I]t is not as if in each and every case where impleadment of a party has to be ordered by the Court, it is necessary that notice has to be issued to the proposed party."

47. Finally, the icing on the cake is found in paragraph 26 of the judgment. *Ashwani Kumar* aptly observes that Order 1, Rule 10 of the Code expressly does not provide that a proposed party must be heard before his impleadment. But, then, the provision does not also mandate that under no circumstance or situation should any notice go to the proposed party. Harmoniously construed, the provision, according to *Ashwani Kumar*, allows the court to exercise its discretion to decide whether it should issue a pre-impleadment notice to the proposed party. That is, it depends on the "facts of the *lis* itself". With respect, I agree with *Ashwani Kumar*.

(g) *Ch. Rama Rao:*

48. *Ch. Rama Rao* is the decision both parties have relied on. So it needs a deeper analysis. An anonymous complaint accused the

authorities of corruption in purchasing hospital equipment. After conducting preliminary investigation, the Lokayukta, through its interim order, directed the Government either to suspend the petitioner or to transfer him. Aggrieved, the petitioner challenged the constitutionality of Sections 3, 4, 7 and 12 of the Andhra Pradesh Lokayukta and Up Lokayukta Act, 1983, as ultra vires of Arts. 14, 16, 19, 21, 226 and 311 of the Constitution of India. He has challenged the interim report as well. Before the Supreme Court, the petitioner pressed for a ruling only on the procedure Lokayukta adopted in its asking the Government to act against the petitioner.

49. The petitioner has contended that he had had no opportunity before the Lokayukta recommended actions against him. According to him, Lokayukta's action offended Section 10 read with Section 12 of the Act. The Supreme Court disagreed, however. After referring to these provisions, *Ch. Rama Rao* has distinguished between the preliminary investigation and regular investigation. It has, then, concluded that it would be unnecessary to put the public servant on notice during the preliminary verification. It is because the Lokayukta conducts the preliminary investigation "in private" and without revealing the identity of both the complainant and the public servant. The public servant must be notified, according to *Ch. Rama Rao*, only when the Lokayukta undertakes regular investigation.

50. As Shri Da Costa Frias has contended, *Ch. Rama Rao* turns on the particular provisions of the Andhra Pradesh Act. Both the learned counsel agree that the Goa Act differs on a few material aspects. But *Ch. Rama Rao* underlines that even when the Lokayukta recommends penal action after the preliminary inquiry, still notice is not an essential feature of preliminary inquiry.

(h) *P. Arumugha Gounder*:

51. In *P. Arumugha Gounder*, the plaintiff sued four defendants. He wanted to implead one more respondent. The defendants wanted to object to it, but the trial Court declined permission. It ruled that "the plaintiff need not have the permission of anyone to file a suit against anybody." *P. Arumugha Gounder* has felt this proposition to be "somewhat extraordinary". According to it, "a person on record is entitled to object to another person coming on the record and embarrassing the trial of the suit. On facts, it has noted that with the proposed party's impleadment, even the defendants' capacity would change.

52. It is essential, *P. Arumugha Gounder* concludes, that the Court should notify all parties concerned so that they can place their views or objection on the joinder. In fact, even the proposed party was not notified before its impleadment. In that context, interestingly, Madras High Court, per Ramachandra Iyer, CJ., has observed that "such a procedure is unknown to law." So the Court has concluded that before any new party is impleaded, he should be notified to show why "he should not be dragged into the Court". It is said to be the proposed party's elementary right. But if we scan the statutory scheme of Rule 10 of Order 1 CPC, *P. Arumugha Gounder's* sweeping statement about the pre-impleadment notice as mandatory is, to quote the very judgment, 'somewhat extraordinary'.

(i) *Bhimavarapu Venkateswara Reddi*:

53. In *Bhimavarapu Venkateswara Reddi*, the High Court of Andhra Pradesh, per Kondaiah J (as his Lordship then was), acknowledges that under Order 1, Rule 10 CPC, the Court has *suo motu* power to add a party to the suit if it thinks it necessary to do so for effective adjudication of the rights of the parties. But it can do so only after notifying the proposed party or parties to the suit. The proposed party, in all fairness, must be given a reasonable opportunity to

represent and to show, if he so desires, to the Court that he is neither a necessary nor proper party to the suit. Such a construction as this, *Bhimavarapu Venkateswara Reddi* opines, would be in accord with the principles of natural justice. Is this requirement an ironclad procedural imperative? Let us see.

The Way forward:

54. Indisputably, Rule 10 of Order 1 of CPC empowers the court to implead a party *suo motu* if it reckons that the party's presence is necessary or proper. It may be against the wish of the plaintiff, the so-called *dominus litus*, or the defendants already on record, who may, technically speaking, feel embarrassed with the proposed party's presence. If put on notice, even the proposed party may object. But none of these three eventualities deters the court from exercising its *suo motu* power. More particularly, the court, usually at the trial stage, exercises its *suo motu* power after going through the record and after concluding that the proposed party's presence is essential. While exercising its *suo motu* powers, the court does not, in the first place, rule based on any self-serving statement by any person already on record about a party's presence. So notice to the parties on record hardly matters. Then, what about the proposed party himself? We will examine what follows he is notified in advance and if he is not notified thus.

The Individual Perspective:

55. First, we will examine the individual perspective. An individual's every right is subject to the statutory limitations unless those limitations fall foul of the Constitution. Here, what is a proposed party's right under the statute? Scrutinised, neither Rule 9 of the Lokayuta Rules nor Rule 10 of Order I CPC requires the Tribunal or the Court to notify the proposed party before his addition to the proceedings. Granted, the rules of natural justice need not be explicit;

they can be read into a statute or a procedure. That is, though they do not supplant the law, they do supplement it.

56. No doubt, procedural fairness is an indispensable adjudicatory attribute; its dilution vitiates the very decision the flawed process has engendered. If the statute dictates, there is no escape. On the other hand, if the statute is silent, what follows?

57. In *Ravi S. Naik v. Union of India*[11], a case that has originated from this State, the Supreme Court has ruled that while applying the principles of natural justice, the court must remember that they are not immutable but flexible; they are not cast in rigid mould; they cannot be put in a legal straight-jacket. According to *Ravi S. Naik*, "whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and the circumstances of a particular case".

58. Conceptually there existed, or still exists, judicial cleavage about the imperative nature of the natural justice. Some decisions have held it as inviolable, and some have said if compliance is 'useless', it is dispensable. Now, jurisprudentially the Courts prefer to follow a middle path: the path of non-prejudice. If non-compliance causes no prejudice, the procedural violation does not prove fatal. But here, on facts and even in the statutory backdrop, is there any scope for importing the principles of natural justice?

59. In the civil matters, a suitor comes to court with a cause and grievance against a person or persons. The court takes the matter on file, numbers it, and serves summonses or notices on the opposite parties, say the defendants. Those defendants may file their written statements or may raise a preliminary objection even before their filing the written statements. That preliminary objection may take many forms. But let us assume there is more than one defendant. Some file

11[ ] AIR 1994 SC 1358

their defence; some raise a preliminary objection; and some may assert that they ought not to have been parties to the proceedings; their inclusion is an abuse of process.

60. Faced with the last objection, the trial court will hear the parties on both sides and decide whether objecting party's presence in the proceedings is necessary. As Rule 10 (2) of Order I CPC mandates, the Court may "at any stage of the proceedings, either upon or without the application of either party," order the name of any party improperly joined, say, as a defendant, be struck out. Similarly, under the same provision and in the same manner, the Court may also add any party.

61. Before registering the suit, the court issues no notice to the defendants to ascertain whether they consent to their presence in the suit and whether they are willing to suffer the litigation. These persons get the summonses only as the defendants already on record. After entering their appearance, they may convince the court that their presence is unnecessary or the very court may feel so. Similarly, in pending proceedings a party may get added later. This temporal difference apart, nothing else distinguishes his entry as a defendant. Then, should he be treated as a different class? Should he be notified so he could object to his inclusion, when the same privilege is not available to the person made a party at the beginning?

62. As the defendant on record from inception does, the newly added party, too, can object to his inclusion after he has been made a party. He need not, I reckon, be put on a different procedural pedestal. This principle applies with more vigour when the court—or a tribunal —decides on its own, that is *suo motu*, to add a party. It does so after going through the record, at whatever stage, and after satisfying itself that that proposed party's presence is essential. The court or the tribunal acts with a sense of responsibility and a sense of duty to do

justice, too, when it exercises its *suo motu* power. Procedure is usually inherent and integral to a judicial forum's substantive power to try a matter and to do justice. The Codes of Procedure merely collate, rather codify, those powers.

63. Here, the argument against pre-impleadment notice gains more traction and assumes more force because the Lokayuta, as a Tribunal, is not bound by codified procedural shackles. It can regulate its own procedure. And when we confine our discussion to Rule 9, its subjection to Rule 10 of Order I CPC is "as far as may be" necessary. The Code of Civil Procedure has no vice-like grip over the Lokayuta's procedure. Our discussion above establishes that even Rule 10 of Order I requires no pre-impleadment notice. Of course, this is only a collateral—not precedential—observation under the CPC.

Public-purpose Perspective:

64. This approach—not notifying the proposed party before his impleadment—also serves a public purpose. The court's *suo motu* statutory power remaining unimpaired even in the face of objections, pre-impleadment notice only results in further delay. Even in the age of instant communication, now termed an era of infodemic, service of notice and summons is the single most time-consuming process or the procedural hassle every court faces. For courts are the last bastions to fall to techno-invasion. It has taken a pandemic, almost.

65. Put plainly, notice to every proposed party inevitably results in delay. Docket deluge clogging the judicial avenues, it is an unaffordable luxury. Instead, if proposed parties are brought on record, not every one of them objects. Yet those who want to object can always do so, as do the defendants or respondents on record from inception. Thus, the delays stand minimised.

66. Under these circumstances, I see no merit in the petitioners' contentions. The Lokayukta's order suffers from no legal infirmity,

including that of violating the principles of natural justice. That said, the petitioners, having been brought on record, have all their defences intact. And those defences include their contention that they are neither necessary nor proper parties to the proceedings.

I, therefore, dismiss the writ petition. No order on costs.

DAMA SESHADRI NAIDU, J.

NH