

Court No. - 18**Case :-** WRIT - B No. - 1021 of 2023**Petitioner :-** Raksha Ram**Respondent :-** Deputy Director Of Consolidation, Shravasti And Others**Counsel for Petitioner :-** Yogesh Singh**Counsel for Respondent :-** C.S.C., Ram Prasad Dwivedi

1. Heard learned counsel for the petitioner, Shri Hemant Kumar Pandey, learned Standing Counsel for State-respondents and Shri Ram Prasad Dwivedi, learned counsel for caveator/opposite party no. 4.

2. Taking note of the facts and circumstances of the case, on being asked, learned counsel for caveator/opposite party no. 4 says that he would not file the counter affidavit and he would argue the case on merits. Considering the same, this Court proceeds to decide the present petition on merits at admission stage.

3. Instant petition has been filed with following main prayer:

"A writ, order or direction in the nature of certiorari quashing the impugned order dated 19.10.2023 as well as order dated 18.08.2023 passed by opposite party No.1 i.e. Deputy Director of Consolidation, Shravasti, and opposite party No.2 i.e. Settlement Officer Consolidation, Shravasti respectively, contained of as Annexure No.1 & 2 respectively to this writ petition, in the interest of justice."

4. By the order dated 18.08.2023, Settlement Officer of Consolidation, Shravasti rejected the objection of the petitioner dated 10.08.2023, which was filed with regard to condonation of delay in filing the appeal, and posted the appeal for final disposal on 25.08.2023. The relevant portion of the order is extracted herein-under:

"18.8.2023 आज पत्रावली पेश हुई। पुकार कराई गयी। उभयपक्ष उपस्थित है। उत्तरदाता के प्रार्थना-पत्र 10.08.2023 पर पक्षों को सुना उत्तरदाता का कथन था कि अपीलान्ट हितबद्ध पक्षकार नहीं है। ऐसी स्थिति में इस अपील के चलने का कोई विधिक औचित्य नहीं है। जिसपर अपीलान्ट के अधिवक्ता द्वारा रजिस्टर्ड मुख्तारनामा प्रस्तुत करते हुए अपने को हितबद्ध पक्षकार बनाया और कथन किया कि मेरी अपील स्वीकार की जाय। पक्षके अधिवक्तागण के तर्कों

को सुनने के उपरान्त मैं इस निष्कर्ष हूँ कि अपील दाखिल करने का अधिकार था ऐसी में उत्तरदाता का प्रार्थना-पत्र मियाद बिन्दु व पोषणीयता का निरस्त योग्य है निरस्त यिका जाता है तथा अपील पर अन्तिम अवसर व निस्तारण हेतु पत्रावली दिनांक 25.8.2023 को पेश हो ।”

5. Challenging the order dated 18.08.2023, the petitioner preferred the revision registered as Case No. 0313/2023 under Section 48 (1) of U.P. Consolidation of Holdings Act, 1953 and the same was dismissed vide order dated 19.10.2023. The relevant portion of the order is extracted herein-under:

“मेरे द्वारा उभय पक्षों के विद्वान अधिवक्तागण के तर्कों को सुना तथा पत्रावली पर उपलब्ध तथ्यों एवं अभिलेखीय साक्ष्यों का सम्यक अवलोकन किया गया। अपीलीय न्यायालय के अपील सं०-00298/2023 विपुल टण्डन बनाम रक्षाराम अन्तर्गत धारा 11 (1) चक० अधि० मौजा इकौना देहात जेरे कार्यवाही की पत्रावली तलब की गयी। अपीलीय पत्रावली में रक्षित न्यायालय फर्द अहकाम आदेश दिनांकित 18.08.2023 का अवलोकन करने पर पाया गया कि अपील में उत्तरदाता रक्षाराम के प्रार्थनापत्र दिनांकित 10.08.2023 पर उभय पक्षों को सुना गया है तथा उत्तरदाता के प्रार्थनापत्र मियाद बिन्दु व पोषणीयता निरस्त किया गया है। अपील पर अंतिम बहस व निस्तारण हेतु तिथि नियत की गयी है। निगरानीकर्ता रक्षाराम की ओर से दाखिल न्यायालय अपर संचालक, चकबन्दी (प्रा०), उ०प्र०, लखनऊ के आदेश दिनांकित 28.02.2023 में दोनों पक्षों की सुनवाई का अवसर देते हुए दो माह में निस्तारित करने का निर्देश दिया गया है, कदाचित इन्हीं आदेशों को ध्यान में रखते हुए अपीलीय न्यायालय द्वारा अपील के समग्र बिन्दुओं पर एकसाथ सुनवाई का आदेश दिनांकित 18.08.2023 पारित किया गया है, जिसमें उपरोक्त विवेचना के आलोक में किसी हस्तक्षेप की आवश्यकता प्रतीत नहीं होती है क्योंकि यह अंतरिम प्रकृति का आदेश है, जिसके विरुद्ध निगरानी ग्राह्य नहीं है। जहां तक अपीलकर्ता द्वारा मुख्तारे आम की प्रति, आपत्ति करने के बाद प्रस्तुत करने का विषय है, वाद के गुण-दोष पर निस्तारण हेतु आदेश से पूर्व कोई भी अभिलेख या साक्ष्य कभी भी प्रस्तुत किया जा सकता है। निगरानी में बहस के दौरान प्रस्तुत अन्य तथ्य अपील के गुणावगुण से सम्बन्धित हैं, जिसे उभय पक्ष अपीलीय न्यायालय पर सुनवाई के दौरान प्रस्तुत कर सकते हैं। प्रश्नगत आदेश से निगरानीकर्ता को अपीलीय न्यायालय में अपना पक्ष प्रस्तुत करने का सम्पूर्ण अवसर प्राप्त है एवं उनके स्वत्व पर कोई प्रभाव नहीं पड़ता है। प्राकृतिक न्याय हेतु व अपील के गुणदोष पर निस्तारण में हो रहे विलम्ब को ध्यान में रखते हुए अपील के समग्र बिन्दुओं पर एकसाथ गुणदोष पर सुनवाई करने से कोई मनाही नहीं है। ऐसी स्थिति में प्रस्तुत निगरानी बलहीन होने के कारण निरस्त होने योग्य है।”

6. Assailing the impugned orders, learned counsel for the petitioner says that order dated 18.08.2023 passed by opposite party no.2/Settlement Officer of Consolidation, Shravasti is a non-speaking order. Elaborating this aspect, he says that a perusal of the order reflects that Settlement Officer of Consolidation, Shravasti has not considered the explanation to condone the delay of 8 years in filing the appeal given by the appellant/opposite party no. 4 namely Vipul Tondon in paras 10 and 11 of the memo of appeal and the moreover the averments made in these paras are completely vague and misconceived, as such, this order is liable to be interfered only on this aspect of the case. He further submitted that it is settled principle that even administrative authorities are required to record the reasons being the heartbeat of the order.

7. He further submitted that the revisional authority while considering the revision challenging the order dated 18.08.2023 passed by opposite party no.2 failed to take note of the fact that opposite party no.2 while passing the final order dated 18.08.2023 failed to record reasons and in fact the revisional authority declined to interfere in the order dated 18.08.2023 only on the basis of order dated 28.02.2023 whereby the Deputy Director Of Consolidation, Shravasti, on an application preferred for transfer of case, directed the appellate authority (opposite party no. 2) to decide the appeal within a period of two months. Direction to decide the appeal does not mean that appeal should be decided without following the manner prescribed and without recording the reasons while passing the orders. In the aforesaid background of the case, interference of this Court is required in the order dated 19.10.2023. Prayer is to allow the petition.

8. Opposing the present petition, Shri Ram Prasad Dwivedi, learned counsel for caveator/opposite party no. 4 says that it is a settled principle of law that matter should be heard on merits and doors of hearing should not be closed. He further says that in the instant case, objection of the petitioner regarding the maintainability of the appeal as also on the issue of condonation of delay were taken note of thereafter, the appellate authority

passed the order dated 18.08.2023 affirmed vide order dated 19.10.2023 wherein the revisional authority while rejecting the revision also considered the order of Deputy Director Of Consolidation, Shravasti dated 28.02.2023, according to which, the appellate authority is required to decide the appeal within a period of two months. Prayer is to dismiss the present petition.

9. Considered the submissions advanced by learned counsels for the parties and perused the record.

10. A perusal of the order dated 18.08.2023 read with paras 10 and 11 of the memo of appeal, indicated above, itself speaks that authority concerned namely opposite party no.2/Settlement Officer of Consolidation, Shravasti has failed to record reasons for coming to the conclusion after taking note of the explanation given by side opposite i.e. opposite party no. 4 for condoning the delay of eight years in filing the appeal.

11. Further, it is also apparent from the impugned order dated 19.10.2023 that the revisional authority while passing the order failed to take note of the settled proposition of law that authority concerned should record reasons while passing the orders particularly when it affects the valuable right of the parties.

12. It is a settled principle of law that an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must be a 'speaking order' and it must not be like the 'inscrutable face of a sphinx'.

13. In judgment passed in the case of **Union of India Vs. Mohan Lal Capoor and Others** reported in (1973) 2 SCC 836, the Apex Court observed as follows:

"28 Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasijudicial.

They should reveal a rationale nexus between the facts considered and conclusions reached. Only in this way can opinion or decisions recorded to be shown to be manifestly just and reasonable."

14. **Lord Denning M.R.**, in the case of **Breen v. Amalgamated Engineering Union** reported in **(1971) 2 QB 175, 191 : (1971) 1 All ER 1148**, observed as under:

"the giving of reasons is one of the fundamentals of good administration."

15. **Sir Donaldson**, in the case of **Alexander Machinery (Dudley) Ltd. Vs. Crabtree** reported in **1974 ICR 120**, has observed that "failure to give reasons amounts to a denial of justice".

16. Observation in the case of **Regina Vs. Immigration Appeal Tribunal Ex parte Khan (Mahmud)** reported in **1983 QB 790 : (1983) 2 All ER 420**, is as under:

"A party appearing before a tribunal is entitled to know, either expressly stated by the tribunal or inferentially stated, what it is to which the tribunal is addressing its mind."

17. In the case of **Travancore Rayon Ltd. v. Union of India** reported in **(1969) 3 SCC 868**, the **Apex Court** observed:

"The court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

18. In the case of **Mahabir Prasad Santosh Kumar v. State of U.P.** reported in **(1970) 1 SCC 764**, the **Apex Court** observed as follows:

"The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law.

"Recording of reasons in support of a decision on a disputed claim by a quasijudicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater; for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just."

19. In the case of **Siemens Engineering & Manufacturing Co. of India Limited v. Union of India** reported in (1976) 2 SCC 981 while dealing with the exercise of an appellate power by the Central Government under the Sea Customs Act, 1878, it was stated thus:

"It is now settled law that where an authority makes an order in exercise of a quasijudicial function, it must record its reasons in support of the order it makes. Every quasijudicial order must be supported by reasons..."

20. Summarizing the legal position with regard to the necessity to give reasons and pass a speaking order while exercising quasi-judicial functions in the case of **Kranti Associates Private Limited And Another v. Masood Ahmed Khan And Others** reported in (2010) 9 SCC 496, it was held as follows:

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

(b) A quasijudicial authority must record reasons in support of its conclusions.

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

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

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

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

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

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

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

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

(k) If a Judge or a quasijudicial authority is not candid enough about his/her decisionmaking process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

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

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

*(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of **Strasbourg Jurisprudence**. See (1994) 19 EHRR 553, at 562 para 29 and **Anya vs. University of Oxford**, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of **European Convention of Human Rights** which requires, "adequate and intelligent reasons must be given for judicial decisions".*

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

21. For the reasons aforesaid including taking note of the law related to requirement to record reasons, this Court is of the view that interference of this Court is required in the impugned orders. Accordingly, the orders dated 19.10.2023 and 18.08.2023, filed as Annexure No. 1 and 2, respectively, to this petition, are set aside.

22. The matter is remanded back to opposite party no.2/Settlement Officer of Consolidation, Shravasti to decide the issue of condonation of delay afresh, within a period of one month from the date of receipt of certified copy of this order and thereafter, if required, he shall proceed to decide the appeal on merits. It is in view of law laid down by this Court in the case of **Ram Prakash v. Deputy Director of Consolidation and Others** reported in **2022 SCC OnLine All 107**.

23. With the aforesaid, the writ petition is **allowed**.

Order Date :- 9.11.2023

Mohit Singh/-