

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9476 OF 2015

Mrs. Deepali Satish Shete	..	Petitioner
vs.		
Chief Officer, Bhor Municipal Council & Ors.	..	Respondents

Mr. Nikhil Sakhardande with Mr. Sandesh D. Patil with Mr. Chintan Shah i/b. Anusha P. Amin for Petitioner.
Mr. Balkrishna Joshi for Respondent No. 1.
Ms. M. S. Bane - 'B' Panel Counsel for Respondent Nos. 2 to 4.
Mr. Dilip Bagwe for Respondent No. 5.
Mr. Umesh Deshmukh - Respondent No. 6 is present in person.
Mr. S. B. Shetye with Ms D. S. Mandkar for Respondent No. 7

CORAM : M. S. SONAK, J.
DATE: 07 OCTOBER 2015

P.C. :-

1] Rule. With the consent of the learned counsel for the parties as also the Respondent No. 6, who appears in person, Rule is made returnable forthwith. Even otherwise, this Court by its order dated 29 September 2015 had put the parties to notice that the Court may consider disposing of the Petition finally at the stage of admission.

2] The challenge in this Petition is to the order dated 22 September 2015 made by the State Government, dismissing the Petitioner's Appeal under Section 44(4) of the Maharashtra

Municipal Councils, Nagar Panchayats, Industrial Townships Act, 1965 (said Act). The Appeal was instituted by the Petitioner against the order dated 6 August 2015 made by the Collector, disqualifying the petitioner as a Councillor under Section 44(1)(b) of the said Act.

3] Mr. Sakhardande, the learned counsel for the Petitioner has submitted that the impugned order contains no reasons whatsoever and the observation that the Petitioner had raised no new points is also an error apparent on face of record. Mr. Sakhardande, by placing reliance upon decisions of the Hon'ble Apex Court in the case of *Chairman, Disciplinary Authority, Ranilakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney & Ors.*¹ and *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. Shukla & Brothers*², has submitted that even where the Appellate Authority affirms the order appealed against, the requirement to record reasons howsoever brief, is not dispensed with. Mr. Sakhardande submitted that if the memo of appeal before the State Government is perused, it is apparent that several grounds were raised. Mr. Sakhardande submits that there is absolutely no reference to the grounds raised and the submissions made, much less is there any consideration thereof. Mr. Sakhardande also pointed out that despite directions issued by this

1 (2009) 4 SCC 240

2 (2010) 4 SCC 785

Court, the State Government delayed the disposal of the appeal, only with a view to present a *fait accompli*. The situation, which is brought about, mainly on account of defiance to the directions of this Court, is required to be remedied in interests of justice.

4] Mr. Joshi, the learned counsel for the Respondent No. 1 i.e. the Chief Officer of the Bhore Municipal Council, has at the outset submitted that the Council does not wish to take any sides in this matter. However, Mr. Joshi submitted that election process having commenced, this Court, in view of the provisions contained in Article 243 ZG of the Constitution of India should not interfere with the same.

5] Mr. Bagwe, the learned counsel for the Respondent No. 5, who was one of the complainants along with the Respondent No. 6 and upon whose complaint the Petitioner has been disqualified, submitted that in matters of affirmance by the Appellate Authority, there is no requirement of giving reasons. In this regard, Mr. Bagwe relied upon the decision of the Apex Court in the case of *Tara Chand Khatri vs. Municipal Corporation of Delhi & Ors.*³, Mr. Bagwe further submitted that the hearing before the State Government held on 25 August 2015 went on for over 90 minutes and full opportunity was accorded to all the parties to put forth their submissions in

3 (1977) 1 SCC 472

support of and against the appeal. This by itself, indicates application of mind by the Appellate Authority. In these circumstances, Mr. Bagwe submitted that this petition may not be entertained.

6] Mr. Deshmukh, the Respondent No. 6 appearing in person substantially adopted the submissions made by Mr. Bagwe. He submitted that even before the Collector, the Petitioner was offered ample opportunity and therefore, there is no need to interfere with the impugned orders.

7] Ms Bane – 'B' Panel Counsel submitted that she supports the orders made by the Collector and the State Government, which, in her submission, are legal and valid.

8] The rival contentions now fall for consideration.

9] It is necessary to note that during the pendency of appeal before the State Government, the Petitioner had instituted writ petition no. 8460 of 2015. The petition was instituted, as according to the Petitioner, neither was the Petitioner's application for stay being heard nor was the appeal itself being taken up for disposal. At this stage, the elections to the post of the President of the

Municipal Council were to be held. The petition was disposed of by order dated 10 September 2015 by recording the statement of Ms Bane, the 'B' Panel Council that application for stay filed by the Petitioner would be positively disposed of on or before 19 September 2015. The statement was also made by the learned counsel appearing for the Respondent No. 2 in the said petition that voters list was to be finalised on 23 September 2015 and therefore, there was no possibility of announcing the election schedule prior to 23 September 2015. No further reliefs were granted in the said petition except observing that the elections to the post of President would be subject to result of the appeal instituted by the petitioner. The reason for not granting any further reliefs in the said petition was because it was expected that the Appellate Authority consistent with the statement made on this behalf, would dispose of the application for stay positively on or before 19 September 2015.

10] The Appellate Authority however, failed to dispose of the application for stay on 19 September 2015. Therefore, the Petitioner instituted yet another writ petition no. 9352 of 2015. The petition was moved on 22 September 2015 and directed to be placed for consideration on 23 September 2015. On 23 September 2015, Ms Bane – 'B' Panel Counsel made a statement that the appeal itself

has been disposed of by the Appellate Authority and a copy of the order dated 22 September 2015 was handed over to the learned counsel appearing for the Petitioner. In view thereof, no further orders were made in writ petition no. 9352 of 2015, which was since disposed of on 23 September 2015. On 23 September 2015 itself, i.e. the same date on which the copy of the impugned order was furnished to the learned counsel for the Petitioner, the present petition was filed. The matter was taken up on 29 September 2015. The Respondent No. 5 applied for adjournment. The matter was directed to be placed on 5 October 2015 and it was made clear that all further steps would be subject to the outcome of this petition. It was also made clear that this Court may consider disposing of the petition finally at the stage of admission.

11] This matter was called out on 5 October 2015. However, the learned counsel for the Respondent No. 5 expressed some personal difficulties and at his request the matter was posted to 7 October 2015. Once again the parties were put to notice that this petition will be disposed of finally on the said date.

12] In the meantime and particularly after this petition was instituted, the State Election Commission by Notification dated 28 September 2015 has published the election schedule. In terms

thereof, the date on which the election process is to be announced is 29 September 2015. The last date for receipt of nominations is 8 October 2015 and the actual poll is scheduled on 1 November 2015.

13] If the aforesaid chronology of events is to be noted, there is a substance in the submission made by Mr. Sakhardande that the action of the Appellate Authority in not adhering to the date of disposal of the stay application by 19 September 2015 has resulted in prejudice to the Petitioner. As noted earlier, the voters list was itself to be finalised on 23 September 2015. Therefore, even the stay application was to be disposed of by 19 September 2015, the Petitioner would have had a window period at least 4 days to question the decision which the Appellate Authority might have made in the matter, and to perhaps persuade this Court to make interim orders.

14] That apart, Mr. Sakhardande has contended that what was to be disposed of by 19 September 2015 was the application for stay. However, the Appellate Authority has proceeded to dispose of the entire appeal itself. No much grievance can be made on this aspect, particularly as on 25 August 2015, it is the case of all concerned that the matter was argued in great detail and the hearing took over

90 minutes to conclude. However what is distressing is that though the hearing was concluded on 25 August 2015 and a statement was made on behalf of the Appellate Authority that the application for stay if not the entire appeal, would be disposed of positively by 19 September 2015, no orders were made in the appeal upto 19 September 2015. The appeal has been disposed of only on 22 September 2015 and that too, after the Petitioner was required to file yet another writ petition before this Court complaining about non compliance and the consequent prejudice.

15] Further, what was still more distressing is that the entire appeal has been virtually disposed of in one sentence by observing that the Petitioner – Appellant has not raised any new point and therefore the appeal is being dismissed. Mr. Bagwe, the learned counsel for the Respondent No. 5 makes reference to paragraph 5 of the impugned order, wherein the Appellate Authority has transcribed verbatim one of the paragraphs from the order of the Collector dated 6 August 2015 by which the Petitioner was disqualified. Mr. Bagwe submits that if paragraphs 5 and 6 of the impugned order are read in conjunction, it is clear that the Appellate Authority has sought to affirm the decision of the Collector. Mr. Bagwe relying upon the decision of the Apex Court in the case of *Tara Chand* (supra) contended that there is absolutely no

requirement to give reasons in a situation where the Appellate Authority merely affirms the order of the Appellate Authority appealed against.

16] In my judgment, the impugned order is completely non speaking and bereft of any reasons whatsoever. There is not even a formal statement in the impugned order that the order appealed against is being affirmed. All that the impugned order states, is that the Petitioner has not raised any new ground and finally concludes by dismissing the appeal. This is not at all a satisfactory manner of dealing with statutory appeals particularly in matters which involve the disqualification of elected representative. It is pertinent to observe that the hearing had concluded on 25 August 2015 and the impugned order has been made on 22 September 2015. Considering the time gap, the least that was expected was that there is some consideration to the grounds raised by the Petitioner and some reasons as to why such grounds are not being accepted. In the case of *Shukla & Brothers* (supra), the Apex Court has held that reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty and helps in the observance of law of precedent. When reasons are announced and

can be weighed, the public can have assurance that the process of correction is in place and working. It is the requirement of law that correction process should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and provide due satisfaction to the consumer of justice under our justice dispensation system. The requirement of stating reasons for judicial orders necessarily does not mean a very detailed or a lengthy order, but there should be some reasoning recorded for declining or granting relief by the judicial or quasi judicial authority. In this case itself reference is made to the consistent view of the Apex Court that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non recording of reasons would lead to dual infirmities. Firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administration or executive actions but they apply with equal force and in fact with greater degree of precision of judicial pronouncements. The order must therefore reflect what weighed with the court in granting or declining relief claimed by the Applicant.

17] The decision in the case of *Tara Chand* (supra) is distinguishable. In the said case, the Apex Court was dealing with the position of a disciplinary authority in the context of agreement that findings of an enquiry officer in departmental enquiry. In this peculiar context, observations were made to the effect that the disciplinary authority need not record reasons if it concurs with the findings recorded by the enquiry officer and proposes to take further action on the basis thereof. However, it was clarified that in case disciplinary authority wishes to disagree with the findings recorded by the enquiry officer, then apart from the compliance with principles of natural justice and fair play, there may be a requirement of record of reasons for such disagreement. In the case of *Tara Chand* (supra), the Apex Court has relied upon its earlier decision in the case of *State of Madras vs. A. R. Srinivasan*⁴, in which a same view is taken. However, in the said case, the Apex Court has led emphasis upon '*manner in which these inquiries are conducted*', which implies inquiries in disciplinary proceedings. Clearly therefore observations are in the context of disciplinary proceedings under Article 311(2) of the Constitution of India and observations cannot read to lay down a blanket proposition that the Appellate Authority, particularly where the appeal is provided by the statute, is not required to record any reasons whatsoever in case of affirmance of

4 AIR 1956 SC 1827

the order of the appealed against.

18] In contrast, the Apex Court itself in the case of *Jagdish Varshney* (supra), upon a very exhaustive review of its earlier decisions has held that the order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons at all. Whether there was an application of mind or not, can only be disclosed by reasons, at least in brief, mentioned in the order of the Appellate Authority. The affirmation order must contain some reasons, at least in brief. The purpose of disclosure of reason is that people must have confidence in judicial or quasi judicial authority. Unless reasons are disclosed, a person cannot know whether or not the authority concerned has applied its mind. Also, giving reasons minimises the chances of arbitrariness. It is essential requirement of the rule of law.

19] The observations in paragraphs 5 to 9 are relevant and therefore the same are reproduced below:

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot

accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. *The view we are taking was also taken by this Court in Divl. Forest Officer v. Madhusudan Rao (vide SCC para 20 : JT para 19), and in M.P. Industries Ltd. v. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India (vide SCC para 6 : AIR para 6), etc.*

7. *In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.*

8. *The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N. Mukherjee v. Union of India, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.*

9. *No doubt, in S. N. Mukherjee's case (supra), it has been observed that : (SCC p. 613, para 36)*

"36. ...The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority."

20] Therefore, applying the principles laid down by the Hon'ble Apex Court to the facts and circumstances of this case, the impugned order dated 22 September 2015 cannot be sustained. The impugned order contains no reasons whatsoever, even though it is an order of affirmance. The impugned order does not indicate even in the least that any of the contentions raised by the Petitioner have been considered or the manner in which the same have been considered. The observations that the Petitioner has not raised any new ground, is really an observation which cannot be said to be borne from the material on record. The memo of appeal is exhaustive and raised several grounds. Mr. Bagwe, learned counsel appearing for the Respondent No. 5 was at pains to point out that hearing before the Appellate Authority went on for over 90 minutes. In these circumstances, it is inconceivable that no new ground was raised by the Petitioner. There is clearly non application of mind in making the impugned order. In any case, application of mind is to be reflected by the reasons, however minimal they may be, in the impugned order. In the present case, there is no reflection whatsoever. The impugned order is therefore required to be set aside and is hereby set aside. The appeal instituted by the Petitioner is restored before the Appellate Authority and the Appellate Authority is directed to consider the same in accordance with law and on its own merits within a time bound

schedule. Further, in disposing of the appeal, the Appellate Authority, consistent with rulings of the Apex Court, including in particular the ruling in the case of *Shukla and Brothers* (supra) and *Jagdish Varshney* (supra), reasons are required to be given.

21] Further question which arises, is what precise relief that can be granted to the Petitioner in the facts and circumstances of the present case. Article 243 ZG of the Constitution of India bars interference by Courts in electoral matters. In this case, as observed earlier, the Petitioner has been put to prejudice, particularly as the Appellate Authority delayed the disposal of the appeal and in the meantime the Authorities rushed with issuance of election schedule even after this petition was instituted. On these basis, the Respondents virtually urge *fait accompli*. In such a situation, therefore, it would be appropriate if the Appellate Authority is directed to dispose of the Petitioner's appeal latest by 23 October 2015. The copy of the order to be furnished to the Petitioner by the said date. Ms Bane – 'B' Panel Counsel submits that reasonable time of at least one month be granted for disposal of the appeal. In the peculiar facts and circumstances of the present case, such submission is indeed unfortunate. The previous statement that application for stay would be disposed of positively on or before 19 September 2015 was not complied with. If now, further time is to be

granted for disposal of the appeal in accordance with law, the same would virtually deprive the Petitioner of the right to appeal, which is the statutory right granted under Section 44(4) of the said Act. The right to a statutory appeal correspondingly imposes a duty upon the Appellate Authority to consider and dispose of such statutory appeal in accordance with law, so that the right to appeal is rendered meaningful. In these circumstances, the direction to dispose of the appeal by 23 October 2015, in the facts and circumstances of the present case, constitutes reasonable time to the Appellate authority to dispose of the appeal. In case, the Petitioner's appeal is allowed, obviously, there would be no vacancy to the position of the Councillor and there would be no question of proceeding ahead with the by-election. In any case, this Court, in its order dated 29 September 2015 had made it clear that all further steps will be subject to the outcome of the petition. Though the elections schedule is not being interfered with at this stage, it is made clear that in case the Petitioner's appeal is allowed, there will be no vacancy in the position of Councillor and consequently there will be no occasion to proceed with the election.

22] In order to save time, the parties are directed to appear before the Appellate Authority on 13 October 2015 at 11 am. and produce authenticated copy of this order. Even otherwise, Ms Bane

– 'B' Panel Counsel is requested to forward an authenticated copy of this order to the Appellate Authority, so that the Appellate Authority is in a position to comply with the directions, at least on this occasion.

23] It is made clear that this Court has not gone into the issue of merits or demerits of the disqualification and accordingly, all contentions of all parties in this regard are left open for decision by the Appellate Authority in accordance with law and on its own merits.

24] The Appellate Authority shall be at liberty to fix date for pronouncement of the order so that there is no issue about communication of the order that may be made in the matter.

25] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

26] All concerned to act on basis of authenticated copy of this Order.

(M. S. SONAK, J.)

CERTIFICATE

“Certified to be true and correct copy of the original
signed Order.”