

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No.12780 of 2007 (U)

PETITIONER :

JOSE KALLOOKKARAN, PROPRIETOR,
JYOTI BHARAT GAS AGENCIES, MARATHAKKARA, THRISSUR.

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS :

1. DISTRICT COLLECTOR,
THRISSUR.
2. SECRETARY,
FOOD CIVIL SUPPLIES & CONSUMER AFFAIRS DEPARTMENT,
GOVERNMENT OF KERALA.

R2 BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- | | | |
|--------|---|---|
| EXT.P1 | : | COPY OF MAHAZAR PREPARED BY THE SPECIAL SQUAD
DTD.20.12.2005. |
| EXT.P2 | : | COPY OF SHOW CAUSE NOTICE ISSUED TO THE
PETITIONER BY FIRST RESPONDENT. |
| EXT.P3 | : | COPY OF REPLY DTD.1.3.2004 SENT BY PETITIONER TO
THE 1ST RESPONDENT. |
| EXT.P4 | : | COPY OF ORDER PASSED BY THE FIRST RESPONDENT
DTD.27.9.2006. |
| EXT.P5 | : | COPY OF MEMORANDUM OF APPEAL DTD.5.12.2006
FILED BY PETITIONER BEFORE THE MINISTER, CIVIL
SUPPLIES. |
| EXT.P6 | : | COPY OF ORDER PASSED BY THE 2ND RESPONDENT
DTD.22.2.2007. |

RESPONDENTS' EXHIBITS : NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.12780 of 2007

Dated this the 3rd day of August, 2015

JUDGMENT

The petitioner, who is an LPG distributor of Bharath Petroleum Corporation Ltd., has approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P4 and P6 orders and for other consequential reliefs.

2. Going by the averments in the Writ Petition the petitioner got selection as an LPG distributor of Bharath Petroleum Corporation Ltd. under physically handicapped category. On 20.12.2005 the Special Squad constituted by the 1st respondent inspected the petitioner's Gas agency and noticed deficiency of 45 filled LPG cylinders and an excess of 45 unfilled cylinders as per the entries in the stock register. Ext.P1 is the mahazar prepared by the Special Squad on 20.12.2005. Based on the report submitted by the Special Squad, the 1st respondent issued Ext.P2 show cause notice dated 4.2.2006 to the petitioner, under the provisions of the Essential Commodities Act, read with Clause 10(a) of LPG (Regulation of Supply and Distribution) Order, 2000.

3. On receipt of Ext.P2 show cause notice, the petitioner submitted Ext.P3 reply. The specific stand taken by the petitioner in Ext.P3 reply is that, about 3000 connections were transferred to his Gas Agency pursuant to refixation of functional limits of the agencies in October, 2005. Due to enormous workload, there was delay in entering all the above connections in the computer. In the meanwhile certain consumers, who were waiting for more than three months, turned hostile and blocked the vehicle carrying gas cylinders. The petitioner had to seek police help for distribution of gas cylinders. As per the direction of the police, he had to supply gas cylinders to those consumers, whose names were yet to be entered in the computer.

4. After the submission of Ext.P3 reply, the 1st respondent issued Ext.P4 order dated 27.9.2006 imposing a fine of ₹20,000/- and ordering confiscation of 45 gas cylinders, which were seized. A reading of Ext.P4 order would show that the 1st respondent has not even looked into the specific explanation offered by the petitioner in Ext.P3 reply. But he has mechanically passed Ext.P4 order stating that the explanation submitted by the petitioner cannot be accepted.

5. Against Ext.P4 order passed by the 1st respondent, the petitioner filed Ext.P5 appeal before the Government, as provided under Section 6(c) of the Essential Commodities Act. The aforesaid appeal was disposed of by the 2nd respondent by Ext.P6 order dated 22.2.2007. The reasoning in Ext.P6 order passed by the 2nd respondent reads thus;

“Government have examined the case in detail and are pleased to take a lenient view in the matter considering the pathetic condition of the petitioner and to exempt him from remitting the fine imposed by the District Collector, Thrissur, since the petitioner has been punished once for the same offence by the oil company. The petitioner is hereby strictly warned that severe punishment will be awarded to him, if similar offences are committed in future.”

6. The grievance of the petitioner is that, though the 2nd respondent interfered with the imposition of fine in Ext.P4 order, the order of confiscation of 45 gas cylinders stands confirmed. It is in such circumstances the petitioner is before this Court in this Writ Petition seeking various reliefs.

7. A counter affidavit has been filed on behalf of the 2nd respondent, justifying the reasoning in Ext.P6. The 2nd respondent would contend that the Bharath Petroleum Corporation Ltd has conducted verification of stock in the gas agency and detected irregularities. The petitioner has remitted an amount of ₹48,898/-. But the Oil Company had not deducted the cylinders from the account. Hence the case against the petitioner stands proved. The 2nd respondent would also contend that, at the time of verification, the shortage of cylinder has been admitted by the petitioner. The stand taken by the 2nd respondent in the counter affidavit is that the Government had taken a lenient view in the matter, considering the pathetic condition of the petitioner and exempted him from remitting the fine imposed by the 1st respondent. As such the order for confiscation stands valid and the same cannot be interfered with in this Writ Petition.

8. I heard the arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

9. The only issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Exts.P4 and P6 orders passed by the 1st and 2nd respondents.

10. The fact that the special squad constituted by the 1st respondent inspected the petitioner's Gas Agency and noted certain deficiency is not in dispute, which is evident from Ext.P1 mahazar. On the basis of Ext.P1 mahazar, the petitioner was issued with Ext.P2 show cause notice, for which he submitted Ext.P3 reply. The specific contention taken in Ext.P3 reply was that, in October, 2004 about 3000 connections were transferred to the petitioner's agency and that due to enormous workload, there was some delay in entering the above connections in the computer. The petitioner has also stated that, due to intervention of the police, he had to supply gas cylinders to those consumers whose names were yet to be entered in the computer. But a reading of Ext.P4 order passed by the 1st respondent would show that the said order has been passed in total non-application of mind, even without advertent to the explanation offered by the petitioner in Ext.P3. Similarly, though the petitioner filed Ext.P5 statutory appeal before the 2nd respondent,

the 2nd respondent passed Ext.P6 order, even without adverting to any of the contentions raised in Ext.P5 appeal. No reason whatsoever has been stated in Ext.P6 order in order to reject the various contentions raised by the petitioner in Ext.P5 appeal.

11. In **Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC 16)** the Apex court has held that, public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Following the principle laid down in Gordhandas Bhanji's case (supra), the Apex Court has reiterated in **Mohinder Singh Gill v. Chief Election Commissioner (1978 (1) SCC 405)** that, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of

affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out.

12. In **Breen v. Amalgamated Engineering Union (1971 (1) All. E.R. 1148)** Lord Denning, M.R. Observed that, the giving of reasons is one of the fundamentals of good administration. In **Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)** it was observed that, failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

13. Following the principle laid down in the decisions referred to above, the Apex Court in **Chairman and Managing Director, United Commercial Bank and others Vs. P.C.Kakkar (2003) 4 SCC 364)** held that, reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of

the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.

14. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The recording of reasons by an administrative or quasi-judicial authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions making. It would apply equally to all decisions made by such authority and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. At the same time, it is not the requirement that, the reasons should be as elaborate as in the decision of a court of law. What is necessary is that, the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.

Hence, it is an essential requirement of the rule of law that, some reasons, at least in brief, must be disclosed in the order passed by an administrative or quasi-judicial authority. If Exts.P4 and P6 orders passed by respondents 1 and 2 are looked in the light of the principle laid down in the judgment referred to above, the conclusion is irresistible that they are passed in clear violation of the principles of natural justice.

15. The learned Special Government Pleader would contend, with reference to Para.2 to 4 of the counter affidavit filed on behalf of the 2nd respondent that, Exts.P4 and P6 orders are one issued after considering all the aspects involved in the issue. However, a bare reading of the said orders make it explicitly clear that, it does not contain any reason whatsoever for taking such a decision. Ext.P6 order does not even indicate as to whether the Government have given due consideration of the points in controversy. The order is indubitably a cryptic order which does not even contain the reasons on which the decision is based. Once it is found that, Exts.P4 and P6 orders do not contain any reason whatsoever for taking such a decision, the conclusion is irresistible that, those orders are passed

ignoring the objective facts pleaded by the petitioner.

16. In such circumstances, Exts.P4 and P6 orders cannot be sustained and they are set aside remanding the matter back to the 1st respondent for fresh consideration, who shall pass a reasoned order after affording the petitioner a reasonable opportunity of being heard, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a certified copy of this judgment.

The Writ Petition is disposed of as above. No order as to costs.

ANIL K.NARENDRA, JUDGE

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