

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

Writ Appeal Nos.100 and 114 of 2015

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DATED:20.02.2015

W.A. No. 100 of 2014

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Between:
V. Papaiah,
Nellore District.

... Appellant

And

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Prohibition & Excise Department,
Hyderabad and others.

....Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA

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Writ Appeal Nos.100 and 114 of 2015

Common Judgment: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti
Sengupta)

Both these matters are disposed of by common judgment and order since the appeals are preferred against the common judgment of the Hon'ble Trial Judge dated 19.12.2014.

We have heard the learned counsel for the appellants and the learned counsel for the unofficial respondent and they are fair enough to say that the matters may be remanded to the file of the Commissioner setting aside the order of the Hon'ble Trial Judge. In the order impugned before the Hon'ble Trial Judge, we find some documents were relied on by the official concerned, however, those were not supplied to either of the parties. Objections were raised by the appellants. But such objections were not dealt with at all. The relevant Rule provides for recording of reasons and both the learned

counsel say that when the statute requires a thing is to be done in a particular manner, it has to be done in that manner and not at all. This settled position of law has been laid down by the Privy Council in the case of **Nazir Ahmad vs. King Emperor**^[1] following the old judgment in the case of **Taylor vs. Taylor**^[2].

Moreover, all the learned counsel have agreed to the Court's observation that the material relied on by the decision maker was not supplied to any person, and the decision is taken solely relying on the same, and such exercise of decision making process is in conflict with the principles of natural justice. On that score also, the order impugned before the Hon'ble Trial Judge by the appellants-writ petitioners cannot be accepted by this Court. However, when we notice that pursuant to this order, action has already been taken and the unofficial respondent in this matter is operating in the field, we think that the present position should not be disturbed until a fresh decision is taken. We therefore set aside the judgment and order of the Hon'ble Trial Judge and keep the order of the Commissioner in abeyance, save and except the steps what have been taken already. All the parties should be heard after notifying on their contentions and objections. All points shall be considered by the Commissioner afresh without being influenced by his earlier decision, obviously, by this time, new

Commissioner will come in the office. So, he will not be influenced by the impugned order passed by his predecessor. Any material sought to be relied on for taking a decision must be supplied to all the parties before considering the same and they will be free to argue before the learned Commissioner, who will pass a speaking order. The entire exercise shall be completed within a period of four weeks from date. In the process, he will pass a fresh order either withdrawing the earlier one, retaining, varying or modifying the same, as the situation may warrant. Any finding and observation of the Hon'ble Trial Judge will not be a binding factor for taking an independent decision. We make it clear that in the event, in spite of notice, the appellants do not turn up before the Commissioner for hearing, then our judgment and order will stand recalled and the order of the Commissioner and consequently the order of the Hon'ble Trial Judge will revive.

The writ appeals are accordingly allowed.

Consequently, the miscellaneous applications, if any pending, shall also stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR,
J

20th February, 2015

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[\[1\]](#) AIR 1936 Privy Council 253 (2)

[\[2\]](#) (1876) 1 Ch D 426