

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2016

C O R A M

THE HON 'BLE Dr. JUSTICE S.VIMALA

Civil Revision Petition (NPD) No.395 of 2016

1. Tmt. Adhilakshmi, W/o. Late Nagaraj
 2. Minor. Vaishavi
 3. Minor Robini
 4. Minor Lalisha
- (Petitioners 2 to 4 are minors, Rep. By
their mother Tmt. Adhilakshmi) ... Petitioners / Applicants

Vs

Union of India, owning Southern Railway,
Rep. By its General Manager,
Southern Railway,
Chennai – 600 003 ... Respondent / Respondent

Prayer : Civil Revision Petition (NPD) filed under Article 227 of the Constitution of India to set-aside the impugned order, dated 17.04.2005, in I.A.No.15 of 2015 in Dy.No.23 of 2015 on the file of the Railway Claims Tribunal, Chennai Bench.

For Petitioners : Mr. G.Mutharasu
For respondent : Mr. A.P.Srinivas,
Standing Counsel for Railways

- - -

ORDER

The Railway Claims Tribunal dismissed the application, seeking condonation of delay of 1,826 days in filing the petition for compensation on the ground that the towering delay of more than five years cannot be condoned, as the conduct of the petitioners only reflect complacency and negligence.

1.1. This order is under challenge in this revision petition.

2. It is the contention of the Southern Railway / respondent herein that, as per Section 17 (b) of the Railway Claims Tribunal Act, 1987, the Application for compensation for death or injury to any person ought to have been filed within one year from the date of accident, i.e., when the accident was on 03.02.2009 and the consequent death of the breadwinner, having occurred on 16.02.2009, the Application ought to have been filed on or before 15.02.2010 and the Claim Petition, having been filed on 21.04.2014, is not maintainable.

3. Whether this contention is correct or not is the issue to be decided?

4. In the Application, seeking condonation of delay, the following reasons have been adduced:-

1. The first petitioner, Adhilakshmi, is an illiterate women, having no legal knowledge.
2. The sudden demise of her husband left her with the responsibility of maintaining three minor daughters.
3. The above two circumstances made her sick and she was also taking native treatment for jaundice.

5. Whether these three causes alleged, can be construed as a sufficient cause, justifying the delay in filing the petition, is the issue canvassed.

6. At this juncture, it will be useful to refer to the provisions dealing with the limitation, namely, Section 17 of the Act, which read thus:-

"17. Limitation--(I) The Claims Tribunal shall not admit an application for any claim-

(a) under sub-clause (i) of clause (a) of sub-section (1) of section 13 unless the application is made within three years from the dale on which the goods in question were entrusted to the railway administration for carriage by railway;

(b) under sub-clause (ii) of clause (a) of sub-section (1) or, as the case may be, subsection (1A)I of section 13 unless the application is made within one year of occurrence of the accident;

(c) under clause (b) sub-section (1) of section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:

Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under section 78B of the Railways Act.

(2) Notwithstanding anything contained in sub-section (1), an application may be entertained after the period specified in sub-section (i) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period."

6.1. Section 13 of the Act reads thus:-

13. Jurisdiction, powers and authority

of Claims Tribunal.--(I) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act—

(a) relating to the responsibility of the railway administrations as carriers under Chapter-VII of the Railways Act in respect of claims for-

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable under section 82A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

(1A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 12A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claim for compensation now payable by the railway administration under section 124A of the said Act or the rules made thereunder;

(2) The provisions of the Railways Act 1989 (24 of 1989) and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act."

7. How the provisions of Section 17 and Section 13 of the Act should be construed / interpreted is the issue to be considered by this Court.

(a) Social justice is an objective under the preamble of the Indian Constitution.

(b) Though Judges have taken oath to administer justice according to law, there is no bar on them to do 'social justice', if that can be done without depriving any person of his existing legal rights.

(c) Administration of justice can no longer be merely protector of legal rights but must, wherever possible, be dispenser of social justice and in doing so, overlook legal technicalities.

(d) Whatever be the precise contents of 'social justice', it would include a recognition of the needs of the weaker sections of the community as 'human beings, e.g., their need for living accommodation."

7.1. The court system belongs to the people and must promote constructive justice; and all institutions, including the Governments and Universities, likewise belong to the people. This commitment is the whet-stone for doing justice in the wider context

of social good.

7.2. In legal terms, it may appear to be an inordinate delay, but not in the life of an illiterate woman, whose relatives and neighbours, were no better in education and who has had to take such a long time to take stock of a great tragedy which plucked the flower from her locks, besides reducing her an young widow with three minor children to take care of. Simply, she was thrown into the winds with no one to fall back. The great loss made her weak mentally, financially and socially.

8. What could have been the motive of the first petitioner in approaching the Court belatedly? Who stands to gain by this belated application? Whether, in any way, she stands to gain because of this delay?

9. The first petitioner would have been the happiest person, if she is able to get the compensation at the earliest, more than anyone else. Under such circumstances, if there is a delay, then it must be only on account of want of knowledge, as alleged by her, because earlier remedy would have given complete financial support to her. The forsaken society in which she was living may be the

cause for that, for which, she cannot be punished.

10. It is appropriate to quote the extent of the guarantee provided for the fundamental right guaranteed under Article 21 of the Constitution of India.

10.1. Maneka Gandhi vs Union Of India (1978 AIR 597 : 1978 SCR (2) 621):-

"Among the great guaranteed rights, life and liberty are the first among equals, carrying a universal connotation cardinal to a decent human order and protected by constitutional armour."

Realities:-

10.2. Widowhood often causes financial stress because a major income source is lost with the death of a husband. When the husband was the principal breadwinner, the widow is now deprived of his income and the nucleus of the family is destroyed.

10.3. Another problem associated with widowhood is loneliness. Many widows live by themselves. They suffer the fear of being alone and loss of self-esteem, as women, in addition to many practical problems related to living alone. They feel the loss of

personal contact and human association; therefore, they tend to withdraw and become unresponsive.

10.4. The greatest problem in widowhood is still emotional. Even if it had been a bad marriage, the survivor feels the loss. The widowed no longer have the day-in and day-out companionship of the other spouse that had become a intrinsic part of their lives. People respond differently to loss and overcome grief in their own time.

10.5. Therefore, the problems associated with widowhood especially when the widowhood has to bear the burden of bringing up three infant children, at the young age, had to be kept in mind, while considering the application to condone the delay.

11. The contention of the learned counsel for the revision petitioner is that the order is bereft of reasons and therefore, the order is liable to be set aside.

11.1. Apart from brevity, clarity and accuracy, the most essential element in the judgment is the reason.

11.2. The Apex Court in the case of **ASSISTANT COMMISSIONER, COMMERCIAL TAX DEPARTMENT, WORKS CONTRACT AND LEASING, KOTA V. SHUKLA AND BROTHERS,**

(2010) 4 SCC 785, held as under:

“12. At the cost of repetition, we may notice, that this Court has consistently taken the view 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 could 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 administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

13. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed

by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders. In the case of *Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr.* [AIR 1976 SC 1785], the Supreme Court held as under:-

“6.If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. ***Then alone administrative authorities and tribunals exercising quasi-judicial function will be***

able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ..."

14. In the case of *Mc Dermott International Inc. v. Burn Standard Co. Ltd. and Ors.* (2006) SLT 345, the Supreme Court clarified the rationality behind providing of reasons and stated the principle as follows:-

"... Reason is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded.

The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the Arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in *Poyser and Mills' Arbitration in Re*, 'proper adequate reasons'. Such reasons

shall not only be intelligible but shall be a reason connected with the case which the Court can see is proper. ***Contradictory reasons are equal to lack of reasons....***"

11.3. It will be useful to refer the words of **Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane**, on September 13, 2002, in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said,

"The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written: -

(1) to clarify your own thoughts;

(2) to explain your decision to the parties;

(3) to communicate the reasons for the decision to the public; and

***(4) to provide reasons for an appeal Court to consider."*Clarity of thought leads to proper reasoning and proper reasoning is the**

foundation of a just and fair decision.

11.4. In the case of ***Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120***, the Court went to the extent of observing that "Failure to give reasons amounts to denial of justice". ***Reasons are really linchpin to administration of justice.*** They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential. ***Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism.***

The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher Courts, but is even of great utility for providing public understanding of law and imposing self-discipline in the Judge as their discretion is controlled by well established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as

judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties.

11.5. In the case of **Jawahar Lal Singh v. Naresh Singh, (1987) 2 SCC 222** and in the case of **Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519**, this Court has held ***that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.***

11.6. Besides referring to the above well-established principles, it will also be useful to refer to some text on the subject. H.W.R.Wade, in the book 'Administrative Law', 7th Edition, stated that the flavour of said reasons is violative of a statutory duty to waive reasons which are normally mandatory. Supporting a view that reasons for decision are essential, it was stated:-

".....A right to reasons is, therefore, an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice.....Reasoned decisions are

not only vital for the purposes of showing the citizen that he is receiving justice: they are also a valuable discipline for the tribunal itself....." "

11.7. Considering the requirement of furnishing reasons and if that requirement is considered, vis-a-vis, the order under challenge, it is clear that the order of the Tribunal is without reason and therefore, it has to be set aside.

12. Under normal circumstances, once the order is set aside, it would be remanded back to the concerned authorities for deciding the application on merits. But, in this case, already, much time has been wasted. Therefore, remanding the matter back would provide further opportunity to delay the issue. Therefore, considering the entire facts and circumstances, this Court feels it appropriate to condone the delay in filing the application for compensation.

13. In the result, the impugned order, dated 17.04.2005, in I.A.No.15 of 2015 in Dy.No.23 of 2015 passed by the Railway Claims Tribunal, Chennai Bench, is liable to be set-aside and I.A.No.15 of 2015 has to be allowed.

14. Considering the reasons stated above, this Court is inclined to condone the delay and I.A.No.15 of 2015 stands allowed. The Tribunal is directed to number the main Application and pass further orders, in accordance with law, after causing enquiry and after hearing both sides.

15. This Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed.

15.03.2016

Index : Yes / No
Web : Yes / No
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S.VIMALA, J.,

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To

1. Railway Claims Tribunal, Chennai Bench

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