

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 14113 of 2016

Date of Decision: 27.9.2016

M/s Apex Architects, Patiala

....Petitioner.

Versus

State Bank of Patiala and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Ajay Pal Singh Saini, Advocate for the petitioner.

Mr. Vikas Chatrath, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the show cause notices dated 9.9.2015 (Annexure P-6), dated 17.11.2015 (Annexure P-8) and the orders dated 29.3.2016 (Annexure P-10) and dated 24.5.2016 (Annexure P-13) debarring/blacklisting the petitioner from participating in any work of the bank as empanelled architect. Further, a direction has been sought to the respondents to take action on the representation dated 30.4.2016 (Annexure P-14) and to release the pending payments of other projects to the petitioner.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner vide letter dated 3.10.2007 (Annexure P-1) sent a proposal for empanelment as architect for various works to the State Bank of Patiala. In response thereto, the name of the petitioner was approved by the Bank as architect for a period of three

years vide empanelment letter dated 29.2.2008 (Annexure P-2). The empanelment of the petitioner expired on 1.3.2011. In the year 2013, the petitioner was engaged independent as an architect for the work of renovation of Zonal Office Building, Chandigarh by the Bank even after the expiry of the sanctioned empanelment period. The petitioner was to play a role of an architect alone and M/s Multiview Construction Company had been engaged for physical execution of the works vide tender document, Annexure P-2A. The work started on 15.9.2013 and was got completed on 3.11.2013. After completion of the works and inspection of the work, respondent No.2 issued a satisfaction certificate dated 18.2.2014 (Annexure P-3) to the petitioner. The petitioner vide letter dated 18.12.2013 (Annexure P-4) informed respondent No.2 that the contractor had executed the work as per the specifications approved by the bank and the quality and quantity of the material used had been checked in the presence of the bank officials and that all the deductions from the bill forwarded by the contractor be made at its own level. The Bank undertook maintenance contract with some other agency for the maintenance of the works so executed in the said Branch. During the period of annual maintenance contract, several modifications were made to the works and new connections were given from the main electric panel as is discernible from a perusal of the photographs, Annexure P-5. On 26.6.2015, after the expiry of 20 months from the date of completion of work, there was a minor outbreak of fire in the building which was immediately brought under control. Accordingly, a notice dated 9.9.2015 (Annexure P-6) was issued to the petitioner to show cause as to why it should not be de-panelled from the approved list of Architects of the Bank. The petitioner submitted reply

dated 7.10.2015 (Annexure P-7) to the said show cause notice. Another notice dated 17.11.2015 (Annexure P-8) was issued to the petitioner to furnish comments on the allegations levelled against it. The petitioner submitted reply dated 28.11.2015 (Annexure P-9) to the said notice. Respondent No.3 vide order dated 29.3.2016 (Annexure P-10) blacklisted/debarred the petitioner from participating in any work of the bank for a period of one year. The respondents asked M/s Multiview Construction Company to replace allegedly substandard items from the premises and vide letter dated 8.2.2016 (Annexure P-11), the petitioner was called upon to verify the materials used by M/s Multiview Construction Company in replacement activity. The petitioner moved the representations (Annexure P-12 Colly) to respondent No.3 for giving personal hearing and for changing its decision of blacklisting/debarring the petitioner, but to no effect. However, respondent No.3 vide order dated 24.5.2016 (Annexure P-13) reiterated their earlier order, Annexure P-10, and confirmed the blacklisting/debarring of the petitioner from participating in any work of the Bank for a period of one year. The petitioner vide letter dated 30.4.2016 (Annexure P-14) requested the Deputy General Manager, State Bank of Patiala, Head Office, the Mall, Patiala for the release of payments of other projects, but no response has been received till date. Hence, the present writ petition. The averments made in the writ petition were controverted by the respondents by filing written statement.

3. Learned counsel for the petitioner submitted that respondent No.3 vide orders dated 29.3.2016 (Annexure P-10) and dated 24.5.2016 (Annexure P-13) had debarred the petitioner for a period of one year without affording an opportunity of hearing. It was also urged that the

impugned orders do not satisfy the test of being a reasoned and speaking orders and were, thus, liable to be quashed. It was further submitted that the impugned orders have been passed in violation of the principles of natural justice. It was also claimed that the representation dated 30.4.2016 (Annexure P-14) has not been responded so far.

4. On the other hand, learned counsel for the respondents besides supporting the orders passed by respondent No.3 submitted that the petitioner had rightly been debarred for a period of one year to participate in any work of the Bank as empanelled Architect due to deficiency in renovation of zonal office building.

5. After hearing learned counsel for the parties, we find merit in the contentions raised by the learned counsel for the petitioner.

6. The order dated 29.3.2016 (Annexure P-10) reads thus:-

“In this connection, we advise that the Bank has debarred your firm for a period of one year (w.e.f. 28.9.2015) to participate in any work of the Bank as empanelled Architect, due to deficiency in the service rendered by you regarding renovation of Zonal Office (Chandigarh) building.

The empanelment Committee will review the matter after one year i.e. 28.9.2016.”

Further, the order dated 24.5.2016 (Annexure P-13) reads as under:-

“Please refer to your letter no. 01644/letter/16-17 dated 30.04.2016 addressed to DGM (HR&Admin.) and your presentation before the committee at H.O., Patiala on

30.04.2016 regarding the above subject.

In this connection, we advise that the committee considered the whole matter dispassionately and are of the view that the decision taken earlier is reasonable and justified.”

7. A perusal of the above orders shows that they are not speaking orders and have not been passed after affording an opportunity of hearing to the petitioner. It was noticed that due to deficiency in the service in renovation of zonal office building, the petitioner had been debarred for a period of one year w.e.f. 28.9.2015 to participate in any work of the Bank as empanelled Architect. Further, it was recorded that the committee considered the whole matter dispassionately and was of the view that the said decision was reasonable and justified. Once the respondents were debarring the petitioner from participating in any work of the Bank as empanelled Architect for a period of one year, the same required to be specifically dealt with by respondent No.3 by passing a speaking order and after affording an opportunity of hearing to the petitioner.

8. Delving into the issue relating to the passing of the speaking order by an authority whether administrative, *quasi judicial or judicial*, it was laid down by the Supreme Court in **M/s Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496** as under:-

“17. The expression `speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with

errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).

18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

19 to 50 XX XX XX

51. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial 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 decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial 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 quasi-judicial authority is not candid enough about his/her decision making 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 'rubber-stamp 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. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

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".

9. Further, the Apex Court in **Canara Bank v. V.K. Awasthy** **AIR 2005 SC 2090** while dealing with the doctrine of principles of natural justice had noticed as under:-

“8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions “natural justice” and “legal justice” do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as

recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence.

"Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

10. The impugned orders dated 29.3.2016 (Annexure P-10) and dated 24.5.2016 (Annexure P-13) do not satisfy the requirements of being a reasoned order as enunciated by the Apex Court in **M/s Kranti Associates Pvt. Ltd's case (supra)** and is passed in violation of the principles of natural justice as per law laid down by the Supreme Court in **V.K. Awasthy's case (supra)**, as noticed hereinabove. Accordingly, the writ petition is allowed and the orders dated 29.3.2016 (Annexure P-10) and dated 24.5.2016 (Annexure P-13) passed by respondent No.3 are quashed. The matter is remitted to respondent No.3 to pass a fresh speaking order after affording an opportunity of hearing to the petitioner in accordance

with law. Needless to say that anything observed herein above shall not be taken to be an expression of opinion on the merits of the controversy.

11. The concerned respondent shall also take decision on the representation dated 30.4.2016 (Annexure P-14) expeditiously after affording an opportunity of hearing to the petitioner by passing speaking order in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

September 27, 2016
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes