

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 16541 of 2014
Date of decision: 29.03.2016

Baldev Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. J.P.S Sidhu, Advocate,
Mr. Abhishek Arora, Advocate,
Mr. P.S. Dhaliwal, Advocate,
for the petitioner.

Mr. L.S.Virk, Addl. A.G., Punjab.
Mr. Aman Bahri, Addl. A.G., Punjab.
Mr. A.P.S.Mann, Addl. A.G., Punjab.
Mr. Pankaj Mulwani, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 31 writ petitions being CWP Nos. 16541, 18254, 18290, 18547, 18731, 22049, 23830, 22608, 25853, 21037, 21460, 21464, 21209, 21158, 22319, 20596, 19356, 21473, 20929 of 2014 and CWP Nos. 227, 270, 693, 1220, 1224, 6131, 17615, 10531, 17455, 17610, 22525, 25607 of 2015 as common questions of facts and law are involved in all the writ petitions. Facts are being taken from ***CWP No. 16541 of 2014, Baldev Singh vs. State of Punjab and others.***

The challenge by the petitioner is to the order dated 28.07.2014 (Annexure P-8) whereby, the claim of the petitioner for government job against the 13 kanals of land acquired in pursuance of awards dated 15.03.2011 and 24.09.2011 out of 882 acres for establishment of Peona Power Plant at village Gobindpura, District Mansa has been rejected by the

Deputy Commissioner. The reasoning given in the impugned order is that the Committee has not recommended the case of the applicant on the ground that it does not fall within the category of exceptional hardship and within the parameters of the guidelines of the Government dated 03.03.2014 (Annexure R-1).

Unfortunately, the order does not show any further reasons to depict as to how the case of the individual does not fall within the parameters of the guidelines dated 03.03.2014 which were decided and circulated. It is on this account, this Court feels that the Deputy Commissioner will be required to conduct a fresh exercise by taking into account each and every person's case separately and by dealing with it by giving proper reasons. The background has to be taken into account for setting aside the impugned orders.

It is to be noted that approximately 882 acres of land was sought to be acquired for the setting up of the Peona Power Plant. Initially, a policy dated 08.11.2011 (Annexure P-1) whereby, public employment was to be given to one member of the family whose land had been acquired for Peona Power Plant was floated. In the said policy, the government jobs were to be given for group C and D posts and the eligibility was 10+2. The owner whose land has been acquired, one family member was to be given the job and if there was a minor child, then the job was to be given on the completion of the study of the child as per the application of the family. The posts were to be taken out of the purview of the Punjab Public Service Commission or Sub-ordinate Service Selection Board. The applications were to be given to the Deputy Commissioner, Mansa.

Thereafter, a meeting took place on 28.02.2014 under the

Chairmanship of the Chief Minister, Punjab as a large number of persons were mis-utilizing the policy and who had managed to become land owners of a fraction of the land prior to the first notification under Section 4 on 04.10.2010. Resultantly, fresh guidelines were issued on 03.03.2014 wherein, the educational qualifications were specified, the definition of family and the age limit alongwith the cut off date. The quantum of land which was acquired was also categorized vide which the persons would become eligible and persons owning less than 2 acres were put in two categories which read as under:-

“a) The applicants whose quantum of acquired land is very less.

b) The applicants whose partial land has been acquired.”

The jobs were to be provided only to those persons whose livelihood has been affected due to acquisition and persons having more than two acres were to be eligible for jobs. However, under Clause 4, in cases of exceptional hardship, where the land holding was between 4 kanals to 2 acres, a Committee was to be formed to assess the genuine hardship and the ground to give the job to the member of the family and make recommendations accordingly. The said clause reads thus:-

“4. Cases of Exceptional hardship:

It was however, observed in the meeting that there may be some cases of exceptional hardship where the family has been completely/substantially affected by the acquisition of land where the land acquired is between 4 kanals to 2 acres. For these cases a committee consisting of following members is constituted:-

1. Representative of Secretary Power.

2. *Representative of Deputy Commissioner, Mansa.*

3. *Land Acquisition Collector.*

This Committee would scrutinize the cases of exceptional hardship where the owner held land to the tune of 4 kanals to 2 acres to assess whether there exists genuine hardship & grounds to give jobs to member of the family and then make recommendations to the Government keeping in view the following guidelines:-

a) *Whether the family has no other source of reasonable livelihood.*

b) *Whether the family has any other land holding in any part of the State.*

c) *Whether the land owner is a bonafide resident of the village for the last five years.*

d) *Whether the family is in receipt of any kind of pension given by the Central/State govt. or any other agency other than the pension given by the the Social Security Department.*

e) *Whether his entire holding has been acquired.*

f) *Whether the land owner has become owner of the land with ulterior motive of deriving benefits of land acquisition.*

It was also decided that henceforth all such cases would be processed in the light of these guidelines/clarifications.”

In the present set of cases, we are only dealing with the cases which belong to the above cases of exceptional hardship where the land measures between 4 kanals to 2 acres. In the present case, 13 kanals of land (260 marlas) is the subject matter of acquisition.

It is not disputed that on account of non-consideration as per

the policy, large number of writ petitions had been filed in this Court, in which, directions were issued that the decisions on the applications for appointment would be taken by 31.07.2014 as per the policy framed. The order was passed in CWP No. 5459 of 2014 on 24.03.2014. It is in pursuance of the said decision, the Committee recommended or raised objections on 24.07.2014. Thereafter, the impugned order was passed on 28.07.2014.

A perusal of the above guidelines would go on to show that it was for the Committee to recommend or reject the case of each and every individual for which it had to obviously record some reasons whether the family had any other source of reasonable livelihood; whether it had any land holding in any other part of the State; whether the land owner was a bona fide resident of the village for the last 5 years; whether the family was in receipt of any pension by the Central or the State Government or any other agency; whether the entire holding had been acquired and whether the land owner has become the owner of the land with ulterior motive by deriving benefits of the land acquisition. Unfortunately, this exercise does not reflect in the impugned order. The reasoning given reads thus:-

“The Committee heard the applicant in person and submitted its detailed report. The said committee has not recommended the case of the applicant being not falling in the category of “Exceptional Hardship”.

Therefore, the claim of the applicant has been considered in the light of the recent guidelines and as per the recommendations of the committee. The applicant does not fulfill the criteria to get the job as per recommendations of the Committee and guidelines of Govt. circular vide memo No. 10/88/2010-PE 1/547

dated 3/3/2014. Hence claim of the applicant is rejected.”

Counsel for the State has made a valiant effort to refer to the record to show that the Committee had taken up the case of each person separately and considered the land holding. It was argued in the present case of Baldev Singh, 260 marlas of land has been acquired. He was the self owner of the land and holding degree of B.A. having other sources of reasonable livelihood and had another 53 kanals. It had also been recorded that the petitioner was a bona fide resident of the village for the last 5 years and was not in receipt of the pension and his entire holding had not been acquired. In the remarks column, it had been mentioned that since there was possession of sufficient amount of land in the village, it was sufficient to recommend his rejection for the said benefit. Reference was also made to the fudging of the revenue record by appending signatures of the Patwari. Reference was also made to Annexure P-14 to show that the said chart has been reproduced by the petitioners themselves and thus, the reasons were recorded in the said remarks column and thus, the parameters and guidelines had been adhered to by the Committee.

Counsel for the petitioner, on the other hand, has referred to various other persons who had been given jobs and whose land holding were less to make out a case of discrimination. However, this Court is only dealing with the aspect of the lack of reasoned order at this stage so that the order can be tested on the anvil of reasoning. The argument raised that the written statement can supplement the reasons in the impugned order is without any basis. For this principle, one can go back to the observations of the Apex Court in this context in ***Mohinder Singh Gill and another vs. The***

Chief Election Commissioner, New Delhi and others, 1978 (1) SCC 405.

The relevant observations read thus:-

“8. The second equally relevant matter is 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, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :

"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 acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.”

The said view was followed recently in ***Dipak Babaria and another vs. State of Gujarat and others, 2014 (3) SCC 502*** and it was held that the State cannot improve its stand by way of filing affidavits.

The purpose of the said principle is that the reasons had to support the administrative orders so that there can be clarity in the order and this Court can examine whether the orders are valid and there are some live

links in the mind of the decision maker. The Hon'ble Apex Court has time and again said that a reasoned order is necessary when the authorities are applying its mind to show that the decision taken is on proper application of mind and whether the orders can be sustained. Reliance can be safely placed upon the judgment of the Apex Court rendered in ***Harbhajan Singh Dhalla vs. Union of India, AIR 1987 SC 9*** wherein it was held that while the observance of the principles of nature justice are required but there should be reasons which should support the decision even if it is an administrative order. The relevant paragraph reads as under:-

“26. In this case there is no provision of any appeal from the order of the Central Government in either granting or refusing to grant sanction under section 86 of the Code. This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in court but inasmuch as there is no provision of appeal, it is necessary that there should be an objective evaluation and examination by the appropriate authority of relevant and material factors in exercising its jurisdiction under section 86 by the Central Government. There is an implicit requirement of observance of the principles of natural justice and also the implicit requirement that decision must be expressed in such a manner that reasons can be spelled out from such decision. Though this is an administrative order in a case of this nature, there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and proper hearing to the person to be affected by the order and give sufficiently clear and explicit reasons. Such reasons must be on relevant material factors objectively

considered- There is no claim of any privilege that disclosure of reasons would undermine the political or national interest of the country.

Similar view has been taken in ***Union of India and others vs.***

Jai Prakash Singh and another, AIR 2007 SC 1363. Relevant paras read as under:-

“7. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

8. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union 1971 (1) All E.R. 1148 observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 LCR 120 it was observed: "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". 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, reasons at least sufficient to indicate an application of mind to the matter before Court. 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."

Thus, testing the impugned order from the above principles laid down, this Court is of the opinion that the petitioners, whose serious right of public employment are involved and who have legal vested rights in view of the policy dated 03.03.2014 cannot be trampled upon with such impunity, as has been done by the Deputy Commissioner without proper reasoning. It would be necessary for him to decide these issues afresh keeping in view the parameters which have already been laid down in the guidelines.

A perusal of the order would go on to show that it has been passed by the Deputy Commissioner whereas, it has been recorded that the Committee heard the applicants in person but the rejection is by the Deputy Commissioner. Thus, the above facts would go on to show that in view of the directions of this Court on 24.03.2014, the Committee had given its recommendations on 24.07.2014 and thereafter the impugned order was passed on 28.07.2014 on the basis of the said recommendations. The order thus passed was only an empty formality which had been completed to comply with the earlier order. In such circumstances, it would be appropriate that the Deputy Commissioner should consider the cases of the petitioners afresh and objectively. A proper opportunity of hearing will be given to the petitioners to furnish their position after issuing show cause notice and supplying them the copy of objections raised by the Committee and thereafter, pass a reasoned order in each and every case individually. It will be open to the petitioners to furnish material before the Deputy

Commissioner to show that they are also entitled for the consideration of the job and do not fall within the exceptional clauses which have been laid down in the policy dated 03.03.2014. The said exercise be carried out by the Deputy Commissioner within a period of 6 months and accordingly separate orders be passed in each case.

Accordingly, the impugned orders are quashed.

The writ petitions stand off disposed of accordingly.

29.03.2016
shivani

(G.S. SANDHAWALIA)
JUDGE