

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 15717 of 2016

Date of Decision: 21.9.2016

M/s Arun Constructions Company, Ludhiana

....Petitioner.

Versus

The Chief Engineer, Punjab Agricultural University, Ludhiana and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE KULDIP SINGH.**

PRESENT: Mr. Rajat Malhotra, Advocate for the petitioner.

Mr. HNS Gill, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. Prayer in this writ petition filed under Articles 226/227 of the Constitution of India is for quashing the impugned order dated 4.7.2016 (Annexure P-6) passed by respondent No.2 debarring the petitioner for tendering in future for a period of two years.

2. Put shortly, the facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is an enlisted Class-I Contractor as per certificate dated 28.7.2014 (Annexure P-2) for civil works. The petitioner had been carrying out various works under the contract with State Government and Punjab Agricultural University and had successfully completed many works allotted to it which is discernible from the completion certificate (Annexure P-3). Respondent No.2 issued a public notice inviting tenders from the registered contractors having Class-I license

for laying of reinforced cement concrete road. In response thereto, the petitioner applied for the tender. The petitioner qualified the technical bid and after completing the formalities including the completion certificates of similar nature of works and deposit of earnest money of ₹ 25,700/-, the financial bid of the petitioner was opened. The petitioner being the lowest bidder was awarded the work vide letter dated 17.11.2015 (Annexure P-4). The work was to be completed within a period of six months commencing from 2.12.2015. The petitioner on the availability of Junior Engineer from the concerned department visited the site on 5.1.2016 and received the layout plan to start the work and requested for providing the necessary infrastructure to store the raw materials required for the work. However, respondent No.2 vide order dated 20.1.2016 (Annexure P-5) withdrawn the work allocated from the petitioner due to non-start of the same within the stipulated period and forfeited the earnest money deposited by the petitioner. Respondent No.2 vide order dated 4.7.2016 (Annexure P-6) informed the petitioner that the Tender Purchase Committee in its 1st meeting held on 9.2.2016 had debarred the petitioner to quote their rates of the tenders/quotations for a period of two years from the date of issuance of the letter. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that respondent No.2 vide order dated 4.7.2016 (Annexure P-6) had blacklisted and debarred the petitioner along with others for a period of two years without affording an opportunity of hearing. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking order and was, thus, liable to be quashed. It was further submitted that the impugned order has been passed in violation of the principles of natural justice.

4. On the other hand, learned counsel for the respondents supported the order passed by respondent No.2.

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 impugned herein (Annexure P-6) reads thus:-

“The tender purchase Committee in its 1st meeting of 2016 held on 09.02.2016 has decided to debar the following contractors/firms to quote their rates in respects of tenders/quotations for a period of two years:-

Sr. No. Name of Contractor/Firm

1. M/s JSM Constructions, 262-D, Rajguru Nagar, Ludhiana.
2. M/s R.C. Nayyar Construction Co., 717, Malerkotla House, Civil Lines, Ludhiana.
3. M/s Sukhraj Constructions Co., 2606, Urban Estate Phase-I, Dugri Road, Ludhiana.
4. Sh. Sukhdev Singh Contractor, 111-Model Gram Extension, Ludhiana.
5. M/s Arun Constructions Co., 349-L, Model Town, Ludhiana.

It is therefore, requested not to open the tender/quotation of above said executive agencies for a period of further two years from the date of issuance of this letter. This may be treated as Most urgent, please.”

7. A perusal of the above order shows that it is neither speaking nor has been passed after affording an opportunity of hearing to the

petitioner. Further, it was noticed that the Tender Purchase Committee in its 1st meeting of 2016 held on 9.2.2016 had decided to debar the contractors including the petitioner for quoting their rates in respect of tenders/quotations for a period of two years. Once the respondents were debarring the petitioner from tendering in future for a period of two years, the same required to be specifically dealt with by respondent No.2 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 order dated 4.7.2016(Annexure P-6) 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 order dated 4.7.2016 (Annexure P-6) passed by respondent No.2 qua the petitioner is quashed. The matter is remitted to respondent No.2 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.

(AJAY KUMAR MITTAL)
JUDGE

September 21, 2016
gbs

(KULDIP SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes