

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

Civil Writ Petition No.26117 of 2015

Date of decision: 11th July, 2016

M/s Paramveer Auto Fuels

....Petitioner

versus

Indian Oil Corporation Ltd. and another

...Respondents

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

- 1. Whether the reporters of the local papers may be allowed to see the judgment?**
- 2. To be referred to the reporters or not?**
- 3. Whether the judgment should be reported in the digest?**

Present: Mr. Amit Goyal, Advocate for the petitioner.
Mr. Ashish Kapoor, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the order dated 05.08.2015 (Annexure P-7) passed by the respondent-Corporation vide which the work order issued in its favour has been withdrawn. Further prayer has been made for staying the impugned order and for granting compensation for the loss of business to the petitioner.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a proprietor firm having its registered office at Bathinda. On 26.12.2014, Annexure P.1, a tender was floated by

the respondent-Corporation for road transportation of bulk petroleum products from

the Bathinda Storage location to its various retail outlets within and outside the State of Punjab for which the petitioner filled the tender and submitted its bid. Vide order dated 25.2.2015, Annexure P-2, the tender bid of the petitioner was rejected on a technical ground that it had given a wrong undertaking that there was no inquiry pending against it whereas a show cause notice of excess loading of high speed diesel was pending against it. Aggrieved by the order, the petitioner approached this Court by way of Civil Writ Petition No.4657 of 2015 which was dismissed vide order dated 08.04.2015, Annexure P.3. The petitioner clarified that its tender bid was rejected merely on the ground of non-disclosure of the inquiry pending against it whereas the tenders of other similarly situated carriers, against whom the same inquiry was pending, were not rejected as mere pendency of inquiry was no hindrance to the submission/acceptance of the bid. The respondent-Corporation sent an email dated 22.06.2015, Annexure P.4 to the petitioner asking it to submit some documents for the award of a parallel contract. The petitioner was asked to complete other formalities. This contract was supposed to induct the petitioner's tank truck to take supplies for its own retail outlets. The petitioner submitted the documents as required by the respondents. The petitioner spent around ₹ 3.50 lacs for the installations as required by the respondent-Corporation. Vide order dated 16.7.2015, Annexure P-6, the respondent-Corporation issued a work order in favour of the petitioner for transportation which was different from the earlier one for which its bid was rejected. This work order was for

transportation of oil for the supply to its own retail outlet only and not to other retail outlets. The petitioner started the work. On 05.08.2015 (Annexure P-7), the above said work order dated 16.07.2015 was withdrawn by the respondent-Corporation without issuing any show cause notice and affording any opportunity of hearing to the petitioner. It was stated that the respondent corporation was not aware about the dismissal order passed by this Court in CWP No.4657 of 2015 (Annexure P-3). Aggrieved thereby, the petitioner wrote e-mails to the respondent-Corporation (Annexures P-8 and P-9) asking it not to withdraw the aforesaid work order but no reply has been received till date. The petitioner is suffering huge losses due to withdrawal of the said work order. Hence, the present writ petition. The averments of the petitioner have been controverted by the respondents by filing the written statement.

3. The main grievance of the petitioner is that the impugned order dated 05.08.2015 (Annexure P-7) has been passed without following the principles of natural justice.

4. Admittedly, a tender for road transportation of bulk petroleum products from Bhatinda Storage location of the respondent corporation to its various retail outlets within and outside the State of Punjab was floated by the respondent Corporation on 26.12.2014. The tender bid submitted by the petitioner was rejected on the ground that it had given a wrong undertaking that there was no enquiry pending against it in respect of any fraudulent practice etc. The writ

petition filed by the petitioner against the rejection order was also dismissed by this Court. According to the petitioner, the tenders of other similarly situated persons against whom same enquiry was pending were not rejected. Thereafter, when the petitioner approached the respondent corporation for award of other contract, it was asked to complete the formalities which it did. The petitioner also spent ₹ 3.50 lacs for the installations as required by the Corporation. On 16.7.2015, Annexure P.6, the petitioner was allotted work order for transportation which was different from the earlier one. On 5.8.2015, Annexure P.7, the said order was withdrawn without giving any reasons. A perusal of the said order shows that no opportunity of hearing was given to the petitioner and the order passed is a non speaking one.

5. 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 thou 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."

6. Further, delving into the issue relating to the passing of the speaking order by an authority whether administrative or quasi 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'.

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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".”

7. In view of the above, the impugned order dated 05.08.2015 (Annexure P-7) being a non- speaking order and passed in violation of the principles of natural justice as per law laid down by the Hon'ble Supreme Court in *V.K. Awasthy* and *M/s Kranti Associates Pvt. Ltd's* cases (supra) is hereby quashed and the present petition is disposed of with a direction to the respondent-Corporation to pass a speaking order afresh after affording an opportunity of hearing to the petitioner in accordance with law. Needless to say, anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy.

(Ajay Kumar Mittal)
Judge

(Ramendra Jain)
Judge

July 11, 2016
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Whether specking/reasoned
Whether reportable

Yes/No
Yes/No