

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 9705 of 2016

Date of Decision: 3.10.2016

M/s Aglow Builders, Ludhiana

....Petitioner.

Versus

Municipal Corporation, Ludhiana and another

...Respondents.

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

PRESENT: Mr. S.S. Behl, Advocate with
Ms. Nidhi, Advocate for the petitioner.

Mr. Samrath Sagar, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 29.4.2016 (Annexure P-7) passed by respondent No.2 debarring/blacklisting the petitioner for a period of three years from the Municipal Corporation, Ludhiana.

2. Briefly stated, the facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is 'A' Class Government Contractor. Respondent No.2 on behalf of respondent No.1 issued notice (Annexure P-1) inviting e-tender bids to install LED street lights and CCTV from the enlisted contractor of Municipal Corporation, Ludhiana in Electrical Branch, Punjab Urban Development Authority, Improvement Trust and other State/Central Government Departments/Boards/Corporations having licence from the Chief Electrical

Inspector, Patiala and also having EPF, ESI and Service Tax Number for the

e-tenders on Single Bid System for 10 number works on the prescribed tender form available at website e-tender. In response thereto, the petitioner applied. The tenders were opened on 9.12.2015. The rates of the petitioner for 8 out of 10 works were found to be the lowest. Vide work order dated 14.3.2016 (Annexure P-2), the petitioner was allotted 8 tenders. However, no work order was issued for the remaining tenders on the said date. The petitioner started doing the work as per the requirement of respondent No.1 and gave orders for supply of necessary articles to the suppliers. Respondent No.2 vide letter dated 18.4.2016 (Annexure P-3) asked the petitioner that no work has been started as 35 days have passed admitting the pressure of work execution from focal point association. The petitioner vide letter dated 20.4.2016 (Annexure P-4) informed respondent No.3 that necessary orders with the supplier for supply of the material had already been placed, partial payment for the same had also been made and the execution of work shall be done in the time bound manner. On 21.4.2016, a news item was published in the newspaper that the contractor was trying to install old poles in place of new one on 16.4.2016. On the basis thereof, respondent No.2 issued a letter dated 26.4.2016 (Annexure P-5) to the petitioner to explain the position within three days. The petitioner replied vide letter dated 27.4.2016 (Annexure P-6) that 1-2 poles which were not painted properly were lying there and the same were also removed and new poles had already been fixed. However, respondent No.2 vide order dated 29.4.2016 (Annexure P-7) debarred the petitioner from the contractorship of Municipal Corporation, Ludhiana w.e.f. 29.4.2016 for three years. The petitioner appeared before respondent No.1 and explained that there was no fault of the petitioner and even as per Clause 14 of MW (Annexure P-8), the

respondents cannot debar or blacklist or take any coercive method but can ask to rectify bad work, if any or can demand compensation against such work. Thereafter, the petitioner moved a representation dated 9.5.2016 (Annexure P-9) to respondent No.1 for withdrawal of the order, Annexure P-7, debarring/blacklisting the petitioner for three years, but to no effect. Upon notice of motion having been issued, the respondents filed a written statement controverting the averments made in the writ petition. It was pleaded therein that as per the work order, the allotted work was to be completed within a period of 45 days and when after 35 days the site of work was inspected, it was found that the petitioner had not started the work. The explanation of the petitioner was called and on 16.4.2016, the petitioner tried to fix the old poles. It was further pleaded that a show cause notice dated 26.4.2016 was issued to the petitioner who vide reply dated 27.4.2016 pleaded its guilt. Thereafter, the order, Annexure P-7, debarring the petitioner from participating in the tenders of Municipal Corporation, Ludhiana for a period of three years was passed. The other averments made in the writ petition were denied and a prayer for dismissal of the writ petition was made.

3. Learned counsel for the petitioner submitted that respondent No.2 vide order dated 29.4.2016 (Annexure P-7) had blacklisted/debarred the petitioner for a period of three years without issuance of any notice and without affording an opportunity of hearing. It has further been urged that the impugned order does not satisfy the test of being a reasoned and speaking order and is, thus, liable to be quashed. It has also been submitted that the impugned order has been passed in violation of the principles of natural justice. Reliance has been placed upon the orders (Annexures P-10

to P-12, respectively) passed by this Court.

4. On the other hand, learned counsel for the respondents supported the order passed by respondent No.2 and prayed for dismissal of the writ petition.

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 29.4.2016 (Annexure P-7) impugned herein reads thus:-

“Reference to the above cited subject, it has been stated that for installing old light poles by painting at Focal point Phase 7 and for committing fraud with the Municipal Corporation for which the image of the Corporation has lowered in the eyes of general public, it has been decided in the meeting of Municipal Corporation's Finance and Contract Committee headed by Hon'ble Commissioner and Mayor vide order dated 28.4.2016 that you have been debarred from contractorship of Municipal Corporation, Ludhiana w.e.f. 29.4.2016 for three years.”

7. A perusal of the above order shows that it is neither speaking nor gives any cogent reasons for debarring the petitioner. Moreover, it has been passed without affording any opportunity of hearing to the petitioner. The respondents had issued notice pointing out that the petitioner was installing old light poles by painting at Focal Point and Phase 7 and was committing fraud due to which the image of the Municipal Corporation had been lowered in the eyes of general public and in view thereof, the

petitioner is being debarred from the contractorship of the Corporation for a period of three years w.e.f. 29.4.2016. Once the respondents were debarring the petitioner from the contractorship of the Municipal Corporation, Ludhiana for a period of three years, the petitioner was required to be issued show cause notice by respondent No.2 and thereafter pass a speaking reasoned order after affording an opportunity of hearing to the petitioner. The respondents have failed to adhere to this legal requirement, therefore, Annexure P-7 is legally unsustainable.

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’.

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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".

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. In view of the above, the impugned order dated 29.4.2016 (Annexure P-7) does 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 29.4.2016 (Annexure P-7) passed by respondent No.2 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

October 3, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes