



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

CORAM:

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.22022 of 2016

P.Rajan

... Petitioner

-vs-

1. State of Tamil Nadu,
Rep. by its Commissioner,
Department of Land Survey and Settlement,
and Additional Director of Survey (I/C),
Chepauk, Chennai-5.
2. The Assistant Director & P.A. to Collector,
O/o.Assistant Director & P.A. to Collector,
Survey and Land Record,
Madurai-20.
3. The Superintendent and Enquiry Officer,
District Land Survey Office, Madurai.
4. The Special Tahsildar,
O/o.The Special Tahsildar,
Adi-Dravidar Welfare Unit,
Usilampatti, Madurai District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for records, pertaining to the impugned order passed by the 2nd respondent in Na.Ka.Ni.A4/1233/2004 dated 11.08.2016 (severed on 04.10.2016) and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader

O R D E R

This writ petition has been filed, seeking to quash the order of the 2nd respondent passed in Na.Ka.Ni.A4/1233/2004 dated 11.08.2016 (served on 04.10.2016), by which the regularization of the suspension period of the petitioner was cancelled by the 2nd respondent on the basis of the proceedings of the 1st respondent vide proceedings dated 22.07.2016 in Na.Ka.La.4/8677/2015(Ni.A) .



2. The case of the petitioner in a nutshell is as follows:

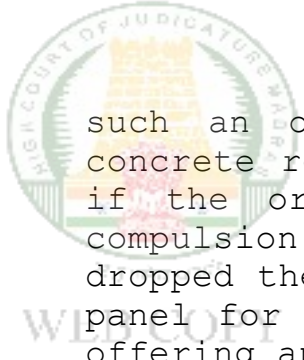
(i) It is submitted that pursuant to registration of a criminal case against the petitioner for the alleged offences under Sections 120(b) IPC and Sections 7, 13(1)(d) r/w 13(2) of P.C.Act, 1988, he was placed under suspension; that the petitioner obtained an order of interim stay of suspension from the Administrative Tribunal and after trial, he was acquitted from the criminal case; that in the departmental enquiry also, charges levelled against the petitioner were dropped on 30.03.2016; that though initially the 2nd respondent had passed a final order stating that there was no prima facie material against him with regard to demand of bribe and had placed his name in the panel list of 2002, based upon the proceedings of the 1st respondent dated 22.07.2016, the very same 2nd respondent has cancelled the period of regularization of his suspension. The said order is under challenge in this writ petition.

3. Learned counsel for the petitioner would submit that the impugned order is a cryptic order and does not contain reasons for such cancellation; that the order has been passed without affording any opportunity of hearing to the petitioner. He would further submit that the order has been passed with the sole intention to cause hindrance to the promotion of the petitioner and the foremost requirement of a decision taken on the administrative side is to record reasons, which is lacking in the impugned order passed by the 2nd respondent. Therefore, the order impugned in this writ petition is liable to be set aside.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

5. A perusal of the impugned order would amply reveal the fact that it is in the form of non speaking order. The Hon'ble Supreme Court and this Court time and again insisted on the requirement of recording reasons and the quasi judicial order must be a speaking one. The Hon'ble Supreme Court in the case of **Mahabir Prasad Santosh Kumar vs. State of U.P.**, reported in **(1970) 1 SCC 764** held that merely giving an opportunity of hearing is not enough and further pointed out that where the order is subject to appeal, the necessity to record reason is even greater. Recording of reasons in support of a decision on a disputed claim ensure that the decision is not a result of caprice, whim or fancy, but was arrived at after considering the relevant law and that the decision was just.

6. In the case on hand, after acquittal from the criminal case and dropping of charges in the departmental enquiry, this impugned order came to be passed by the 2nd respondent on the proceedings of the 1st respondent, being the Superior Officer. One cannot come to a definite conclusion on the bare sight of it as to the passing of



such an order of cancellation, because it does not give any concrete reasons for deriving such decision. It simply depicts as if the order was passed by the 2nd respondent on account of compulsion or instigation. The 2nd respondent, initially having dropped the charges against the petitioner and enlisted him in the panel for promotion, has taken absolutely contra decision without offering any justification for the same.

7. The Hon'ble Supreme Court in the case of **Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others**, reported in (2010) 9 SCC 496, has elaborately discussed with regard to the need for recording reasons by the quasi judicial authority, by relying upon numerous earlier judgments of the Supreme Court and has been pleased to hold as under:

"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.

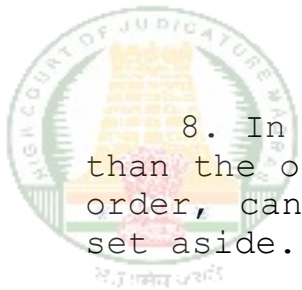
k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

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".



8. In view of what is stated herein-above, no other conclusion than the one that the impugned order is a cryptic and non speaking order, can be arrived at and therefore, the same is liable to be set aside.

9. Accordingly, this Writ Petition is allowed and the impugned order dated 11.08.2016 is set aside. The matter is remanded to the 2nd respondent for passing afresh order on merits and in accordance with law, if so advised, upon giving adequate reasons for its conclusions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (AS)

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Sub Assistant Registrar

To:

1. The Commissioner,
State of Tamil Nadu,
Department of Land Survey and Settlement,
and Additional Director of Survey (I/C),
Chepauk, Chennai-5.
2. The Assistant Director & P.A. to Collector,
O/o. Assistant Director & P.A. to Collector,
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4. The Special Tahsildar,
O/o. The Special Tahsildar,
Adi-Dravidar Welfare Unit,
Usilampatti, Madurai District.

+1cc to Mr.T.Lajapathi Roy, Advocate, SR.No.949

W.P. (MD) No.22022 of 2016
04.01.2017

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