

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.25206 of 2016

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of certiorari calling for the records pertaining to award passed by the first respondent in Case No.21C/ IFG/ 2015/ 18081 dated 07.05.2016 and quash the same as illegal and incorrect.

2) The facts in issue are as under:

The petitioner is the Greater Visakhapatnam Municipal Corporation, rep. by its Commissioner, Visakhapatnam. The Government of Andhra Pradesh had introduced a scheme in the name of N.T.R.Sujala Shrivanti Scheme vide G.O.Ms.No.127, Panchayatraj and Rural Development (RWS-II) dated 30.08.2014, with a view to provide 20 litres of drinking water to each house in the rural arrears at a nominal rate of Rs.2/- per can. Pursuant thereto, the petitioner called for the tenders under notification No.20/ 2014-2015/ EE-III(W-S-M)/ DM dated 16.09.2014. The second respondent and another ie. M/s. Sri Svoham Sales Corporation submitted their tenders. Though M/s. Sri Svoham Sales Corporation quoted the lowest rate, they failed to enter into an agreement with the petitioner. Hence, the second respondent was declared as a successful bidder. Accordingly, the second respondent

entered into 12 agreements for installation of 12 water plants. As per the conditions of the agreement, only standard equipment has to be installed. Later, disputes arose between the petitioner and the second respondent with regard to the quality of equipment installed and other aspects. Since a dispute also arose with regard to payment of money, a complaint was lodged before the first respondent, who issued a notice dated 13.04.2016 to the petitioner informing about the meeting of the Council to be held on 30.04.2016. Since the notice was misplaced in the town planning department, the petitioner could not attend the same before the first respondent on 30.04.2016. The said meeting was postponed to 07.05.2016. It is stated that the second notice was also misplaced but however the meeting of the Council was brought to the notice of the petitioner on 06.05.2016. Immediately, the Assistant Engineer, Engineering Department and others of the petitioner-Corporation were rushed to the first respondent on 07.05.2016, but, by the time they reached, the impugned proceedings came to be passed. Assailing the same, the present writ petition came to be filed.

3) A counter came to be filed by the second respondent stating that the writ petition is not maintainable in law as the petitioner failed to comply with the requirements of Section 19 of the Micro Small and Medium Enterprises Development

Act, 2006 (for short “the Act”) by not depositing 75% of the decretal amount before filing the writ petition. It is urged that though the petitioner is having an alternative remedy to challenge the award passed by the first respondent by filing a petition to set aside the same before the competent Court under Section 18 (3) read with Section 34 of the Act, but failed to avail the same. It is further urged that there is no violation of principles of natural justice, as the petitioner was provided with an opportunity by giving two notices, which were received in the office of the petitioner. It is urged that in the writ affidavit itself, the petitioner admitted about the receipt of notices but took a plea that the said notices were misplaced, which cannot be accepted. It is further stated in the counter that the claim-petition filed by the second respondent was in accordance with the norms and only after considering the evidence placed on record, the impugned order came to be passed by the 1st respondent.

4) By an order dated 28.07.2016, this Court, while admitting the writ petition, granted interim suspension as prayed for, since the impugned award is bereft of reasons.

5) Learned counsel for the petitioner would submit that the impugned order came to be challenged on the ground that the order passed, directing the petitioner to pay a sum of Rs.46,74,560/- towards principal and Rs.20,71,633/- towards

interest, is contrary to the principles of natural justice as the petitioner was not heard. It is further argued that when the petitioner is directed to pay such a huge amount, the order should indicate the reasons as to why the authority has directed the petitioner to pay such a huge amount with interest, which is half of the principal amount. It appears that without giving any reasons, the claim of the second respondent was accepted by the Council. It is urged that non-filing of explanation and non-participating in the proceedings was neither willful nor wanton but only due to non-communication of the receipt of the notices by one department to another. It is further urged that if an opportunity is given, the petitioner will put forward its case and convince the members that the claim of the second respondent is contrary to the terms and conditions of the agreement.

6) The same is opposed by the learned counsel for the second respondent contending that the petitioner ought not to have approached this Court directly under Article 226 of the Constitution of India without availing the remedy provided under the Act. It is further stated that under Section 19 of the Act, 2006, any application filed for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute

resolution services to which a reference is made by the Council, shall not be entertained by any Court unless the appellant has deposited 75% of the amount in terms of the decree, award or, as the case may be. It is further urged that the argument of the learned counsel for the petitioner that the impugned order came to be passed violating the principles of natural justice is incorrect. It is submitted that as the petitioner failed to participate in the proceedings, in spite of giving sufficient opportunities, the impugned order came to be passed.

7) It is urged by the learned counsel for the petitioner that a conjoint reading of Sections 18 and 19 of the Act and Sub-Section 4 of Section 2 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act"), makes it clear that Part I of the provisions of the Arbitration Act are applicable to every arbitration under any other enactment for the time being in force, as if the arbitrations were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except insofar as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder. It is stated that if the petitioner has any grievance against the arbitral award, the only remedy available to him is under Section 34 of the Arbitration Act. Though the petitioner is aware about the remedy, it invoked

the jurisdiction of this Court so as to avoid depositing 75% of the awarded amount. Relying upon the judgments of the Apex Court in *Goodyear India Limited v. Norton Intech Rubbers Private Limited and another*¹ and *Modern Industries v. M/s. Steel Authority of India Limited and others*² learned counsel for the second respondent would contend that deposit of 75% of the awarded amount is a pre-requisite for entertaining any application either under Section 34 of the Arbitration Act or Article 226 of the Constitution of India.

8) The questions that arise for consideration are (1) Whether the petitioner could have invoked the jurisdiction of this Court under article 226 of the Constitution of India; (2) Whether this Court could have entertained the writ petition without directing the petitioner to deposit 75% of the award amount; and (3) Whether the order under challenge warrants interference as it is bereft of any reasons.

9) Before proceeding further it would be appropriate to refer to Sections 18 and 19 of the Act and Section 34 of the Arbitration Act, which reads as under:

“Section 18: Reference to Micro and Small Enterprises Facilitation Council:

(1) Notwithstanding anything contained in any other law for the time being in force, any

¹ (2012) 6 SCC 345

² (2010) 5 SCC 44

party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises

Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

- (5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

19. Application for setting aside decree, award or order: No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy five percent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to *set aside* the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.

Section 34 of the Arbitration Act:

34. Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

10) It is to be noted that an interim order came to be passed on 28.07.2016. While entertaining the writ petition, this Court passed the interim order, without insisting the

petitioner to deposit 75% of the awarded amount, which according to the second respondent is mandatory. Thereafter, vacate stay petition came to be filed stating that the interim order could have been passed only on payment of 75% of the award amount.

11) It is also to be noted here that when the vacate stay application is taken up, all the counsel agreed for disposal of the main writ petition itself. When the matter is taken up for hearing, the learned counsel for the petitioner submitted that the petitioner herein has paid Rs.20.00 lakhs to the second respondent in the month of March, 2017 itself, thereby complying with Section 19 of the Act.

12) Therefore, the issue that arises for consideration is with regard to the maintainability of the writ petition and the non-fulfilment of condition stipulated in Section 19 of the Act, while entertaining the writ petition.

13) As observed earlier both the counsel agreed for disposal of the main writ petition itself. A learned Single judge of this Court dealt with the maintainability of the writ petition in *State Water and Sanitation Mission, Hyderabad v. A.P. Micro and Small Enterprises Facilitation Council, Hyderabad and another*³. Learned counsel for the second

³ (2015) 5 ALD 611

respondent tried to distinguish the said judgment with the case on hand by pointing out to para No.5 of the said judgment, which reads as under:

“It is not in dispute that the 2nd respondent has revised its claim and filed it on 04.10.2013 before the Council and the Council has passed its Order the very next day, namely 05.10.2013. It is now urged before me specifically that the petitioner herein had not been provided with a proper opportunity to meet the revised claim of the second respondent and bring out as to how it is not tenable. Therefore, it is urged that the order of the Council dated 05.10.2013 is bad for violation of the principles of natural justice.”

14) Situation appears to be a little different in the instant case. It is true that the writ petitioner did not respond to the first notice. The reason being, that the same was misplaced in the Town Planning Department of the petitioner. Issuance of second notice came to the knowledge of the petitioner, a day prior to the date fixed. Immediately, the Assistant Engineer, along with staff, proceeded to the office of the first respondent, but by the time they reached, the impugned order came to be passed. As the petitioner was found to be absent and since no statement of defence was submitted, the plea of the claimant was accepted in toto. Immediately thereafter, the petitioner preferred the present writ petition.

15) In *Goodyear India Limited v. Norton Intech Rubbers Private Limited and another (1 supra)* the Apex Court held as under:

“11. Having considered the submissions made, both on behalf of the petitioner and on behalf of the respondents, we do not see any reason to interfere with the views expressed, both by the learned Single Judge, as also the Division Bench with regard to Section 19 of the Act. It may not be out of place to mention that the provisions of section 19 of the Act, had been challenged before the Kerala High Court in *Kerala SRTC v. Union of India*⁴, where the submissions were negated and, subsequently, the matter also came up to this Court, when the Special leave petitions were dismissed, with leave to make the predeposit in the cases involved, within an extended period of ten weeks. We may also indicate that the expression “in the manner directed by such court” would, in our view, indicate the discretion given to the Court to allow the predeposit to be made, if felt necessary, in instalments.”

16) In W.A.M.P.No.3110 of 2014 in W.A.No.1265 of 2014 a Division Bench of this Court held as under:

“Having prima facie satisfied that the learned Single Judge has ignored the mandatory statutory provision being Section 19 of the Minor, Small and Medium Enterprises Development Act, 2006 for deposit in order to have the challenge admitted, we grant stay of operation of the impugned order and the writ

⁴ (2010) 1 KLT 65

petition shall also not be heard and the same may be kept pending till the disposal of the writ appeal.”

17) In *State Water and Sanitation Mission Hyderabad v. A.P. Micro and Small Enterprises Facilitation Council, Hyderabad and another (3 supra)* it has been held as under:

“Accordingly, the Order dated 05.10.2013 passed by the 1st respondent is set aside. The claim of the 2nd respondent is restored to the 1st respondent and the 1st respondent shall provide an opportunity to the petitioner herein to file its statement in defence of the claim of the 2nd respondent in a time span not exceeding 15 days to do so and thereafter, provide an opportunity of hearing to both the petitioner as well as the 2nd respondent herein who is the claimant and then pass an Award setting out briefly the reasons why the conclusions have been arrived at by it. It is made clear that the monies paid to the 2nd respondent, pursuant to the interlocutory order passed by this Court on 16.12.2014, will abide by the result of the claim now to be decided by the 1st respondent. The 1st respondent is further directed to complete the entire exercise in as quicker time as is possible, preferably within a maximum period of two months from the date of receipt of a copy of this order.”

18) Therefore payment of money as contemplated under Section 19 is a pre-requisite for entertaining an appeal or a revision. Since the amount is paid at a later stage, and in view of the Judgment of the Apex Court in *Good Year India Limited (1 supra)*, the writ petition can be entertained.

19) The issue as to invoking the jurisdiction of the High Court without availing the remedy available under the Act came up for consideration before the Apex Court on many occasions. Dealing with the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (old Act), where the provisions are similar to the case on hand, a learned Single Judge of this Court in *Cable Corporation of India Limited Mumbai v. A.P. Micro and Small Enterprises Facilitation Council, Hyderabad*⁵ after referring to the judgments of the Apex Court, held as under:

“ The Hon’ble Supreme Court emphasised the need to require the person, who approaches the High Court, under Article 226 of the Constitution of India, to exhaust the other statutory remedies. However, the existence of other statutory remedies was not treated, per se as a prohibition to invoke the writ jurisdiction of the High Court. It is, as a matter of policy, to discourage indiscriminate invocation of the extraordinary jurisdiction of the High Court, that the parties were required to exhaust their other remedies. Here again exceptions were carved out.

For instance, if an administrative or quasi judicial authority has passed an order without jurisdiction or an authority, or, though vested with the jurisdiction, the authority passed the orders, in violation of the principles of natural justice, existence of alternative remedy was not at all treated as a bar, or impediment for the High Court to entertain a writ petition, in which such orders are challenged. Here again, a distinction needs to be

⁵ (2013) 3 ALD 279

maintained between a writ petition, filed for a Writ of Mandamus, on the one hand, and Writ of Certiorari, on the other hand. The Constitutional Bench of the Supreme Court, in *STATE OF U.P. v. MOHAMMAD NOOH*⁶ explained the distinction, in detail. It would be, both educative and enlightening, to read few paragraphs of the judgment.

“Para-10: In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury’s Laws of England, 3rd Edn., Vol.11, p.130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. In the *King v. Postmaster General*⁷ a certiorari was issued although the aggrieved party

⁶ AIR 1958 SC 86

⁷ (1928) 1 KB 291

had an alternative remedy by way of appeal. It has been held that the superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction. The case of *Rex v. Wandsworth*⁸ is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction. At p. 284 Viscount Caldecote, C.J. observed:

“It remains to consider the argument that the remedy of certiorari is not open to the applicant because others were available. It would be ludicrous in such a case as the present for the convicted person to ask for a case to be stated. It would mean asking this Court to consider as a question of law whether Justices were right in convicting a man without hearing his evidence. That is so extravagant an argument as not to merit a moment's consideration. As to the right of appeal to quarter sessions, it may be that the applicant could have had his remedy if he had pursued that course, but I am not aware of any reason why, if in such circumstances as these, he preferred to apply for an order of certiorari to quash his conviction, the court should be debarred from granting his application”.

Likewise in *Khurshed Modi v. Rent Controller, Bombay*⁹ it was held that the High Court would not

⁸ (1942) 1 KB 281

⁹ AIR 1947 Bombay 46

refuse to issue a writ of certiorari merely because there was a right of appeal. It was recognized that ordinarily the High Court would require the petitioner to have recourse to his ordinary remedies, but if it found that there had been a breach of fundamental principles of justice, the High Court would certainly not hesitate to issue the writ of certiorari. To the same effect are the following observations of Harries, C.J., in *Assistant Collector of Customs v. Soorajmull Nagarmul* at p. 470:

“There can, I think, be no doubt that Court can refuse to issue a certiorari if the petitioner has other remedies equally convenient and effective. But it appears to me that there can be cases where the Court can and should issue a certiorari even where such alternative remedies are available. Where a court or tribunal, which is called upon to exercise judicial or quasi-judicial functions discards all rules of natural justice and arrives at a decision contrary to all accepted principles of justice then it appears to me that the court can and must interfere”.

It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari. (See *Corpus Juris Secundum*, Vol.14 Article 40, p. 189). If, therefore, the existence of other adequate legal remedies is not per se a bar to the issue of a writ of certiorari and if in a proper case it may be the duty of the superior court to issue a writ of certiorari to correct the errors of an inferior court or tribunal called upon to exercise judicable or quasi-judicial functions and not to relegate the

petitioner to other legal remedies available to him and I the superior court can in a proper case exercise its jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal, e.g. by furnishing security required by the statute, should it then be laid down as an inflexible rule of law that the superior court must deny the writ when an inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior court or tribunal on appeal or revision?...

Para-11: On the authorities referred to above it appears to us that there may conceivably be cases –and the instant case is in point –where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to

it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that”.

This was reiterated in BABURAM PRAKASH CHANDRAMAHESHWARI v ANTARIM ZILA PRISHAD NOW ZILAPARISHAD, MUZAFFARNAGAR¹⁰, and in many other judgments. The facts of the present case warrant similar approach.”

20) From the judgment of the Apex Court and also of this Court referred to above, it is clear that jurisdiction of this Court under Article 226 of the Constitution of India can be invoked if the order impugned violates the basic principles of law, more particularly principles of natural justice.

21) It is to be noted here that the impugned order is bereft of any reasons. The Council simply accepted the plea of the claimant and directed the petitioner to pay a sum of Rs.46,74,560/- towards principal and Rs.20,71,633/- towards interest.

¹⁰ AIR 1969 SC 556

22) It is well established principles of law that an administrative authority exercising judicial or quasi-judicial functions is required to record reasons which are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. As stated earlier, no reasons are mentioned to show as to how the said authority came to such a conclusion. Though the learned counsel for the second respondent would contend that reasons may not be necessary since the petitioner failed to appear before the authority, but the same appears to be incorrect in view of the two judgments referred to hereunder.

23) In *Cable Corporation of India Limited, Mumbai v. A.P. Micro and Small Enterprises Facilitation Council, Hyderabad and another*¹¹ a learned Single Judge of this Court held as under:

“The experience shows that, whatever may have been the laudable objective of the Central or State Legislatures in enacting laws, providing for "speedy remedies", excessive tribunalisation has given rise to more problems, than what were supposed to be solved. This appears to be mostly on account of the fact that the persons who are associated with the Tribunals, or most of them are not sensitised about the basic principles of adjudication. For the most part of it an adjudication gets or gains acceptability because the end result is the culmination of the

¹¹ (2013) 3 ALD 279

application of not only the substantive provisions, but also the principles of procedure, defined by law. Even if the outcome of case is correct on merits, it suffers a serious dent, if there is any serious lapse as to procedure, on an important aspect. There is no attempt by this Court, to subject the order passed by the Council to the litmus test of general principles. A typical procedure is prescribed for the proceedings before the Council.”

24) A Constitution Bench of the Apex Court in *S.N.Mukharjee v. Union of India*¹² categorically held that “the administrative authorities must record reasons unless specifically dispensed with expressly or by necessary implication, in support of its decision in as much as recording of reasons in support of the decision is one of the limbs of the principles of natural justice.” The Apex Court further observed as under:

“35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the order considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of

¹² 1990 AIR 1984

fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

25) In view of the judgments referred to above; as a sum of Rs.20.00 lakhs has been paid in the month of March, 2017 which fulfils the requirement of Section 19 of the Act and as the order is bereft of any reasons indicating that the authority has shown no consideration to the points in controversy, the order under challenge is *set aside* and the matter is remanded to the first respondent to consider the same afresh in accordance with law after hearing the petitioner and

aggrieved persons. It is needless to mention that the Council shall pass a reasoned order after hearing all concerned as early as possible preferably within a period of eight weeks from the date of receipt of a copy of the order.

26) With the above direction, the writ petition is disposed of. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending shall stand closed.

29.06.2017
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JUSTICE C. PRAVEEN KUMAR

