

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.27482 of 2016

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of certiorari calling for the records pertaining to the award passed by the first respondent in Case No.21C/ IFC/ 2015/ 15713 dated 20.02.2016 and quash the same.

2) The facts in issue are as under:

The petitioner, who is a Registered Contractor for the East Coast Railways, entered into a contract for construction of Road Over bridges, three in number, at Level Crossing No.438, 373 and 376 on Howrah-Chennai Main Line in East Coast Railways under the agreement No.13/ CE/ Cn/ I/ BBS/ KEPU/ 2011 dated 13.11.2011. Under the said agreement, the petitioner sub-contracted part of Item No.10 and 11 of Schedule-E of the above said contract, to the third respondent, with prescribed specifications. The work order was given to the third respondent on 23.12.2014. The petitioner paid an amount of Rs.1,00,000/- towards advance to the third respondent before commencement of work and subsequently paid Rs.11,00,000/- towards part performance of the work order dated 23.12.2014. In spite of receiving the said amount, the third respondent is said to have failed to complete the work to the standards agreed upon. Left with no other option, the petitioner completed the said work through another contractor, but, there was substantial delay in getting the work completed as the third

respondent left the work incomplete. Due to which, the final bill, which was to be paid by the East Coast Railways, was also delayed. Though the third respondent did not respond during the pendency of the said work, and also after completion of the said work by the petitioner through another contractor, he got issued a legal notice dated 14.08.2015 demanding Rs.7,33,176/-, to which a reply was given on 22.08.2015, denying the claim of the third respondent. The third respondent filed a claim petition before the Telangana State Micro and Small Enterprises Facilitation Council at Hyderabad (hereinafter referred to as "the Council"). The Council took cognizance of the case and issued a notice to the petitioner to attend before the council on 02.01.2016. On that day the petitioner appeared before the Council and sought time for filing objections along with documentary evidence. Thereafter the said case was posted to 20.02.2016. On 20.02.2016, the representative of the petitioner appeared and again sought further time for filing the relevant documents since some of the documents are to be secured from East Coast Railways. Without giving an opportunity to the petitioner, the Council hastily closed the conciliation proceedings, and on the same day passed the impugned award. Challenging the same, the petitioner filed the present writ petition.

3) A counter came to be filed by the third respondent stating that the third respondent executed the work to an extent of 6003.60 square meters and after completion of the work, addressed a letter dated 08.08.2015 to the petitioner claiming

Rs.19,33,176/- . Out of the due amount, the petitioner paid only a sum of Rs.12.00 lakhs and the balance of Rs.7,33,176/- is still due. Since the petitioner failed to pay the said amount, the third respondent got issued a legal notice dated 14.08.2015, to which a reply was issued by the petitioner denying the claim made by the third respondent. It is averred that as the petitioner failed to make the payment, the third respondent approached the second respondent and filed the claim petition. The second respondent issued a notice to the petitioner asking him to appear before the Council on 02.01.2016. The petitioner appeared on the said date, sought time for producing documents and also for filing the objections. As such the case was adjourned to 20.02.2016. On 20.02.2016 the petitioner failed to file his defence statement and did not also pay his share of deposit. Basing on the documentary evidence, the second respondent passed the impugned award. It is further stated in the counter that the award does not suffer from any legal or factual infirmities and it is in consonance with law. The allegation that the third respondent was given work order only to an extent of 5000 sq. mts. is false and actually the third respondent executed the work to an extent of 6003.60 square meters.

4) By an order dated 18.08.2016, this Court, while admitting the writ petition, granted interim suspension as prayed for since the impugned award was bereft of reasons.

5) Learned counsel for the petitioner submits that without giving any proper opportunity to submit the explanation, the Council has abruptly closed the proceedings. He submits that though the representative of the petitioner sought time for producing the documents, the Council closed the same and passed the award directing the petitioner to pay Rs.7,33,176.00 towards principal and Rs.1,10,712/- towards interest. It is his case that under Section 18 (2) of the Micro Small and Medium Enterprises Development Act, 2006 (for short "the Act"), the Council can either conduct conciliation in the matter or seek the assistance of the institution or centre providing Alternate Dispute Resolution Centre by making a reference to such institution or centre for conducting conciliation and that Sections 65 to 81 of the Arbitration Act shall apply. As per Section 18 (3) of the Act, where the conciliation proceedings initiated under sub-section (2) are not successful and stands terminated without any settlement between the parties, the Council shall either itself taken up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration. Section 18 (4) postulates that 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. In view of these provisions, it is urged that Section 18 (2) and 18 (4) of the Act run contrary to each other. However, the

larger question which is urged by the learned counsel for the petitioner is that the impugned award is bereft of any reasons.

6) A reading of the order glaringly reflects that the same is bereft of any reasons. The Council simply accepted the plea of the claimant and directed the petitioner to pay Rs.7,33,176/- towards principal and Rs.1,10,712/- towards interest.

7) It is well established principles of law that an administrative authority exercising judicial or quasi-judicial functions is required to record the 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 third respondent would contend that reasons may not be necessary since the petitioner failed to file defense statement, but the same, in my view appears to be incorrect.

8) In *Cable Corporation of India Limited, Mumbai v. A.P. Micro and Small Enterprises Facilitation Council, Hyderabad and another*<sup>1</sup> 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

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<sup>1</sup> (2013) 3 ALD 279



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 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.”

9) A Constitution Bench of the Apex Court in *S.N. Mukharjee v. Union of India*<sup>2</sup> 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 fairness in the process of decisions-making.

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<sup>2</sup> 1990 AIR 1984

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.”

10) In *State Water and Sanitation Mission Hyderabad v. A.P. Micro and Small Enterprises Facilitation Council, Hyderabad and another*<sup>3</sup> a learned Single Judge of this Court held as under:

“It is important to notice that the provisions contained in [Sections 15](#) to [23](#) of the Act have been given overriding effect by the Parliament, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. It is, undoubtedly, true that by providing for such an overriding effect to the provisions contained in [Sections 15](#) to [23](#) of the Act, the Parliament intended to protect the interests of Micro, Small and

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<sup>3</sup> (2015) 5 ALD 611

Medium Enterprises and promote the competitiveness of theirs, so that they can stay afloat with other industries. But these provisions, in my opinion, cannot be read as excluding the judicial review power of the High Court under [Article 226](#) of the Constitution. For the present, I am not pronouncing any final opinion on such an issue, in view of the conclusion to which I have arrived, as set out herein below. Judicial review power vested with the constitutional Courts springs from the very Constitution. Therefore, even by a statutory exercise, no Legislature can seek to curtail or diminish that power totally. It may be a different aspect as to when the Court should really be called upon to exercise such power. However, where principles of natural justice are breached, it is only appropriate that the error should be set right immediately. Lest, the very exercise of power carried out in flagrant violation of the principles of natural justice would hold the field unjustly. This is one major reason that is weighing with my mind when I generated a debate in this regard at the Bar. I have also suggested that the matter should be sent back to the Council for a proper consideration duly hearing the petitioner herein. This apart, the Award has not assigned any specific reasons. As is too well-known, reasons are the live links, which bring out the application of mind by the decision-maker. The reasons offer clarity and fairness of approach adopted while deciding the issue. It is one thing to say that very exhaustive reasons may not have been required to be spelt out like a well-trained Court would have while adjudicating a lis brought before it, but however, the 1st respondent Council, which has been clothed with the power to adjudicate and pronounce upon an order relating to payment of arrears and its recovery, it is essentially required of it to assign reasons as to why it has reached the conclusion to which it did. Lest, whole exercise would turn itself into an arbitrary fiat. Therefore, for sheer violation of the principles of natural justice in providing a fair and effective opportunity to the petitioner to meet



the case set up by the 2nd respondent in the form of a revised claim, the Award passed by the 1st respondent on 05.10.2013 deserves to be set aside.”

11) In view of the judgments referred to above, the order which is bereft of any reasons indicating that the authority has shown no consideration to the points in controversy, is liable to be *set aside*.

12) At this stage, the learned counsel for the third respondent would submit that this Court could not have entertained the writ petition, without directing the petitioner to deposit 75% of the decretal amount, which is a pre-condition, in terms of Section 19 of the Act. There is no dispute with regard to said proposition. In fact Section 19 of the Act postulates deposit of 75% of the decretal amount before entertaining any appeal or revision etc. against the said order.

13) In *Goodyear India Limited v. Norton Intech Rubbers Private Limited and another*<sup>4</sup> 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*<sup>5</sup>, 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

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<sup>4</sup> (2012) 6 SCC 345

<sup>5</sup> (2010) 1 KLT 65

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.”

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

15) From the judgments referred to above, it is clear that deposit of 75% of the decretal amount, is a condition precedent for entertaining any appeal or revision. Even in *State Water and Sanitation Mission Hyderabad v. A.P. Micro and Small Enterprises Facilitation Council, Hyderabad and another* (3 *supra*) a learned Single Judge of this Court while setting aside the order of the Council on the ground that the same is violative of principles of natural justice and that a writ petition under Article 226 of the Constitution of India would be entertained, observed 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.”

16) Since the main writ petition, which was entertained long back without imposing any condition, is agreed upon by all the counsel to be decided finally, and as the reason for setting aside the impugned order being that the order is bereft of any reasons, showing non-application of mind, which was also held to be violative of principles of natural justice, the order under challenge is *set aside* and the matter is remanded back to the second respondent; directing the said authority, to consider the same afresh in accordance with law, subject to petitioner depositing 75% of the awarded amount, before the appropriate authority within six weeks from the date of receipt of a copy of the order. 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. Till such time the amount so deposited shall not be disbursed to the un-official respondent.

17) 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.

JUSTICE C. PRAVEEN KUMAR

29.06.2017  
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