

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-13148-2017

Date of Decision: 19.9.2017

Ram Saroop

...Petitioner

Versus

The Postgraduate Institute of Medical Education and Research (PGIMER),
Chandigarh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.**

PRESENT: Mr. Rahul Sharma, Advocate for the petitioner.

Mr. Somesh Gupta, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 8.5.2017 (Annexure P-20) passed by respondent No.3.

2. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. In September, 2015, respondent No.2 invited tenders vide tender form dated 15.9.2015 (Annexure P-2) for the grant of license to run a Restaurant (Non-Traditional) in shop No.8, New Shopping Complex, Post Graduate Institute of Medical Education and Research (PGIMER). In response thereto, the petitioner submitted his tender. He was granted the license being the highest bidder to run a Restaurant (Non-Traditional) in shop No.8, New Shopping Complex,

PGIMER vide letter dated 1.10.2015 (Annexure P-1). Respondent No.2 again invited tenders for the grant of license to run the built up cafeteria at the Advance Trauma Centre with one of the terms and conditions that a tenderer having a license of an existing shop of similar trade in PGI on the date of the filing of the tender would have to submit an affidavit that in case of allotment of the tendered shop, the applicant would have to surrender the existing shop before taking over the possession of the new shop. The petitioner submitted his tender document dated 21.12.2015 (Annexure P-3) along with the affidavit and earnest money of ₹ 1,00,000/-. Vide letter dated 25.2.2016 (Annexure P-4), respondent No.3 informed the petitioner that he has been declared as H-1 bidder and directed to give 60 days vacation notice for shop No.8 for getting the allotment of the cafeteria at the Advance Trauma Centre. Meanwhile, the previous licensee of the cafeteria approached the Court against the termination of his existing license on 19.11.2015 and got the interim order in FAO-1391-2016. The petitioner was informed in this regard vide letter dated 2.5.2016 (Annexure P-5). This Court vide order dated 16.11.2016 (Annexure P-6) disposed of the said appeal by observing that the disposal of the appeal would not preclude the respondents from taking any steps on the application filed for extension of the license period. Thereafter, respondent No.3 vide letters dated 2.12.2016 and 13.12.2016 (Annexures P-7 and P-8, respectively) directed the petitioner to give 60 days vacation notice of shop No.8, New Shopping Complex, PGIMER, Chandigarh. The petitioner submitted his reply to the said letter to respondent No.3 vide letter dated 20.12.2016 (Annexure P-9). Respondent No.3 again vide letter dated 16.1.2017 (Annexure P-10) directed the petitioner to give 60 days vacation notice. Against the letter,

Annexure P-10, the petitioner filed CWP-1907-2017 and this Court vide order dated 2.2.2017 (Annexure P-11) issued notice of motion for 14.2.2017. During the pendency of the said writ petition, the respondents issued a letter dated 14.2.2017 (Annexure P-12) for termination of the license of the petitioner qua shop No.8 and further directed to vacate the same by 30.3.2017. The respondents vide letter dated 22.2.2017 (Annexure P-13) granted licenser to the petitioner to run the built up cafeteria at the Advance Trauma Centre for a period of two years. The writ petition was also disposed of by this Court vide order dated 1.3.2017 (Annexure P-14). On the receipt of the termination letter, Annexure P-12, the petitioner explained the reasons for delay in depositing the license fee vide letter dated 7.3.2017 (Annexure P-15). The petitioner vide letter dated 8.3.2017 (Annexure P-16) requested respondent No.3 for grant of time till 25.5.2017 for executing the necessary documents and to deposit the requisite amount of license fee and security. However, the petitioner was asked vide letter dated 31.3.2017 (Annexure P-17) to handover the possession of the shop by 31.3.2017 and to take possession of the cafeteria on 1.4.2017. On failure of the petitioner to do so, respondent No.3 vide letter dated 7.4.2017 (Annexure P-18) offered the allotment of the cafeteria to Shri Rajbir Singh, the next highest bidder. On refusal of said Shri Rajbir Singh, the allotment of the cafeteria was offered to the third highest bidder vide letter dated 1.5.2017 (Annexure P-19). Respondent No.3 vide order dated 8.5.2017 (Annexure P-20) debarred the petitioner for a period of two years and forfeited his earnest money. Respondent No.3 had also encashed the securities and bank guarantee furnished by the petitioner vide letter dated 9.5.2017 (Annexure P-21). Hence, the present writ petition.

3. The writ petition is contested by the respondents by filing a written statement. It has been pleaded therein that the petitioner was not entitled to the hearing in view of the vacation/termination notice dated 14.2.2017 (Annexure P-12) and the letter dated 22.2.2017 (Annexure P-13) licensing out built up cafeteria at Advance Trauma Centre, PGIMER, Chandigarh. Further, it was pleaded that the action was taken in terms of Clause 9 of the Tender Document, Annexure P-3. The other averments made in the writ petition were denied and a prayer for dismissal of the writ petition was made.

4. Learned counsel for the petitioner submitted that respondent No.3 vide order dated 8.5.2017 (Annexure P-20) had forfeited the earnest money deposited by the petitioner and debarred him for a period of two years without affording an opportunity of hearing. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking one and was, thus, liable to be quashed. It was further submitted that the impugned order has been passed in violation of the principles of natural justice.

5. On the other hand, learned counsel for the respondents supported the order, Annexure P-20, passed by respondent No.3 for forfeiting the earnest money of the petitioner and debarring him for a period of two years.

6. After hearing learned counsel for the parties, we find merit in the contentions raised by the learned counsel for the petitioner.

7. The order dated 8.5.2017 (Annexure P-20) passed by respondent No.3 reads thus:-

“It is informed that you have backed out to take

possession of the cafeteria, Advance Trauma Centre, PGIMER, Sector 12, Chandigarh, which was allotted to you. Hence, you are hereby debarred for two years and your earnest money has also been forfeited in terms of clause No.09 of the tender document.”

8. A perusal of the above order shows that it is not a speaking order which has been passed after affording an opportunity of hearing to the petitioner. It was noticed that the petitioner had backed out to take possession of the cafeteria, Advance Trauma Centre, PGIMER, Chandigarh which was allotted to him. On the said premise, the petitioner was debarred for a period of two years after forfeiture of the earnest money deposited by him. Once the respondents were forfeiting the earnest money of the petitioner and debarring him, the same were required to be specifically dealt with by respondent No.3 by passing a speaking order and after affording an opportunity of hearing to the petitioner.

9. 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'.

19 to 50 XX XX XX

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 'rubberstamp

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".

10. 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."

11. The order dated 8.5.2017 (Annexure P-20) passed by respondent No.3 debarring the petitioner after forfeiture of the earnest money does not satisfy the requirements of being a reasoned one 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.

12. In view of the above, the writ petition is allowed and the order dated 8.5.2017 (Annexure P-20) passed by respondent No.3 is quashed.

The matter is remitted to respondent No.3 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

September 19, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No