

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-19095-2016

Date of Decision: 8.11.2017

Sarbjit Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

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

PRESENT: Mr. Anurag Chopra, Advocate for the petitioner.

Mr. IPS Doabia, Additional Advocate General, Punjab.

Mr. H.K. Aurora, Advocate for respondent No.2.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ in the nature of mandamus/certiorari against the inaction of respondent No.2 in levying/calculating the property tax in excess as notified in the manual, Annexure P-2, by the Municipal Corporation, Jalandhar; for restraining respondent No.2 from sealing the shop in question along with recovery of excessive property tax for the year 2012-13 in view of notice dated 7.9.2016 (Annexure P-17); for quashing the letter dated 9.5.2014 (Annexure P-13) and the order dated 18.7.2016 (Annexure P-16) whereby the appeal filed by the petitioner has been dismissed by the Commissioner, Jalandhar Division, Jalandhar (in short “the Commissioner”); and for

issuance of a direction restraining respondent No.2 from levying the annual rental value in excess of rates notified vide letter dated 15.11.2010 (Annexure P-4).

2. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner entered into a Lease Agreement on 30.8.2008 (Annexure P-1) with the lessee to operate the Franchisee of M/s Levis Strauss India Private Limited and the rent was to be paid to the lessor at the rate of ₹ 76,000/- per month. The parameters of calculation of the property tax have been laid down in the manual, Annexure P-2. The Annual Rental Value of the property was ₹ 8,20,800/- and respondent No.2 vide letter dated 11.12.2009 (Annexure P-2) assessed the value of the property in question as ₹ 8,64,000/- for the assessment year 2008-09. Respondent No.2 unilaterally increased the rate of the Annual Rental Value of the property at ₹ 16,84,000/- and used the same amount to calculate the annual tax amount for the said property for the year 2010-11. Vide letter dated 15.11.2010 (Annexure P-4), respondent No.2 invited objections from the petitioner against the calculation of assessment of tax within 30 days. In response thereto, the petitioner submitted his objections vide letter dated 6.12.2010 (Annexure P-5) to respondent No.2. The petitioner had paid the house tax/property tax of all the rented properties including the property in dispute for the assessment years 2009-10, 2010-11 and 2011-12 vide receipts (Annexures P-6 to P-10, respectively). The property in dispute fell vacant from November, 2012 when the Lease Agreement of the petitioner with the lessee was terminated and, therefore, no rental value/income was being generated for the petitioner from the same. Respondent No.2 vide letters dated 18.2.2014 and 2.4.2014

(Annexures P-11 and P-12, respectively) directed the petitioner to appear before it for hearing of the objections. Respondent No.2 issued a notice dated 9.5.2014 (Annexure P-13) under Section 103 of the Punjab Municipal Act, 1976 (hereinafter referred to as “the Act”) to the petitioner proposing the Annual Rental Value of the property at ₹ 16,84,800/- per annum for the year 2010-11 raising the Annual Rental Value from ₹ 8,64,000/- assessed for the year 2008-09. Accordingly, respondent No.2 calculated the total tax at ₹ 6,11,488/- and sought the recovery vide letter/bill dated 9.7.2014 (Annexure P-14). Feeling aggrieved by the letter, Annexure P-13, enhancing the Annual Rental Value of the property in question for assessment year 2010-11 at ₹ 16,84,800/-, the petitioner filed an appeal dated 13.8.2014 (Annexure P-15) before the Commissioner. The Commissioner vide order dated 18.7.2016 (Annexure P-16) dismissed the said appeal. Thereafter, respondent No.2 vide letter dated 7.9.2016 (Annexure P-17) directed the petitioner to pay an amount of ₹ 6,11,488/- for the assessment year 2012-13 otherwise the proceedings under Section 138 of the Act were to be initiated to seal the property in question. Hence, the present writ petition.

3. The writ petition is contested by the respondents. It has been pleaded by respondent No.2 in its written statement that the manual, Annexure P-2, related to the calculation of property tax which was levied in the year 2013-14 and the assessment was to be made as self-assessment and not house tax assessment which was done by the officials of respondent No.2 before the year 2013-14. It was further pleaded that the Annual Rental Value of the property in question was assessed at ₹ 8,64,000/- per annum as self commercial for the assessment year 2008-09 and the objections were sought from the petitioner. The petitioner did not raise any objection and

the property was assessed at the said rate. Thereafter, the property in question was inspected on 23.9.2010 and on finding that the first floor and the second floor were rented out and the petitioner was receiving the total rent of ₹ 1,56,000/- per month, the Annual Rental Value of the property was amended and increased to ₹ 16,84,800/-. A notice under Section 103 of the Act was issued to the petitioner and his objections were sought which he submitted vide letter dated 6.12.2010. The petitioner was requested to appear before the assessing authority on various dates, but he did not appear. Respondent No.2 vide order dated 8.5.2014 assessed the Annual Rental Value of the property at ₹ 16,84,800/- per annum and issued a bill dated 9.7.2014 to the petitioner to deposit a sum of ₹ 6,11,488/- as arrears of house tax. The petitioner filed an appeal against the said assessment which was also dismissed by the Commissioner vide order dated 18.7.2016 (Annexure P-16). 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 the Commissioner vide order dated 18.7.2016 (Annexure P-16) had dismissed the appeal filed against the order dated 9.5.2014 (Annexure P-13) passed by respondent No.2 enhancing the Annual Rental Value of the property in question from ₹ 8,64,000/- to ₹ 16,84,800/- per annum for the assessment year 2010-11 without affording proper 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-16, passed by the Commissioner by submitting that the appeal of the petitioner against the enhancement of the Annual Rental Value of the property in question has rightly been dismissed.

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 18.7.2016 (Annexure P-16) reads thus:-

“1 to 3 XX XX XX

4. I have considered the submissions made by the counsel for the parties and have also carefully examined the record. The appellant did not appear before the respondents after filing the objections despite repeated intimation through various letters. Since the appellant was not coming before the respondents or before the House Tax Sub Committee despite repeated letters, the impugned order has been passed by the respondents. The appellant has failed to make out any case to warrant interference in appeal. The appeal is dismissed.”

8. A perusal of the above order shows that it is not a speaking order which has been passed after affording proper opportunity of hearing to the petitioner. It was recorded by the Commissioner that the petitioner has failed to make out any case warranting interference in the appeal without assigning any reasons and dealing with the objections as had been filed by the petitioner before the authorities below. The Commissioner while dismissing the appeal of the petitioner, was required to specifically deal with all the submissions and pleas of the petitioner and pass a speaking order after affording proper opportunity of hearing to him.

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 HRR 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 18.7.2016 (Annexure P-16) passed by the

Commissioner dismissing the appeal of the petitioner against the order of enhancement of the Annual Rental Value of the property in question 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 18.7.2016 (Annexure P-16) passed by the Commissioner is quashed. The matter is remitted to the Commissioner to pass a fresh speaking order after affording proper 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.

13. It was pointed out by the learned counsel for the petitioner that the amount as ordered by this Court vide order dated 15.9.2016 had been deposited. It is directed that the retention of the said amount by the respondents shall be subject to the orders passed by the appellate authority on the appeal of the petitioner.

(AJAY KUMAR MITTAL)
JUDGE

November 8, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes