

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-17105-2017

Date of Decision: 17.8.2017

M/s Kaithal Wine Trader, L-13, Narwana

...Petitioner

Versus

State of Haryana and others

...Respondents

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

PRESENT: Mr. Sandeep Lather, Advocate for the petitioner.

Ms. Mamta Singal Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. Communication dated 16.8.2017 addressed by the Deputy Commissioner, Jind to the Advocate General, Haryana produced in Court today is taken on record.

2. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the letter dated 23.7.2017 (Annexure P-8) issued by respondent No.4 directing the petitioner to shift liquor vend code No. ZJND09B6 within the revenue limit of village Siwaha (Jind) from its present location to some another suitable location away from the village and for quashing the action of the official respondents vide which the said liquor

vend has been sealed on 23.7.2017. Further, a writ of mandamus has been sought directing the official respondents to open the seal of the said liquor vend and to give compensation amounting to ₹ 40,000/- per day to the petitioner from 23.7.2017 till the opening of the affixed seal to the liquor vend.

3. Put shortly, the facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is a registered firm and is doing the business of selling the liquor under the license, Annexure P-1, issued by the respondent-department for the period from 25.4.2017 to 31.3.2018 subject to the payment of ₹ 4,71,11,111/- as license fee for District Jind Zone No.ZJND09. A power of attorney was given by the petitioner to Mandeep son of Laxman, to act on its behalf for running the business of selling the liquor. The petitioner has opened its vend within the revenue limit of village Siwaha vide vend code No.ZJND09B6 in a rented vend which was taken on rent vide rent agreement dated 10.5.2017 as per site plan (Annexure P-3) sanctioned by the Department. On 17.5.2017, some miscreants started creating hindrance in the business of the petitioner and caused the damage to the shutter of the liquor vend, broke the bottles of liquor and snatched away some cash. FIR No. 0165 dated 17.5.2017 under Sections 379-B, 148, 149, 323, 427, 452, 506 of Indian Penal Code (Annexure P-4) was got registered in this regard. The petitioner has also filed a civil suit for permanent injunction along with an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure on 20.5.2017 (Annexure P-5) restraining the defendants from interfering in the business of the petitioner. The trial Court vide order dated 30.5.2017 (Annexure P-6) restrained the villagers from raising slogans and to interfere

in the business of selling of liquor by the plaintiff and the case was adjourned to 17.7.2017. The trial court vide order dated 17.7.2017 (Annexure P-7) extended the status quo and adjourned the case to 10.8.2017. Despite of status quo order, no action was taken by respondents No.3 and 4. However, respondent No.4 has affixed the seal on the liquor vend of the petitioner on 23.7.2017 and vide letter of even date (Annexure P-8), respondent No.4 had directed the petitioner to shift the vend from its present location to some another suitable location away from the population of the village. As per the affidavit dated 24.7.2017 (Annexure P-9) submitted by some of the villagers and the photographs (Annexure P-10), there is no highway, temple or school near the liquor vend. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that respondent No.3 vide letter dated 23.7.2017 (Annexure P-8) had directed the petitioner to shift the liquor vend code No. ZJND09B6 within the revenue limits of village Siwaha (Jind) from its present location to some another suitable location away from the village. It was further submitted that respondent No.4 had sealed the liquor vend of the petitioner on 23.7.2017 without affording an opportunity of hearing. It was also urged that the impugned letter 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 letter has been issued in violation of the principles of natural justice.

5. On the other hand, learned State counsel supported the action of the respondents in directing the petitioner to shift the vend from its present location to some another suitable location away from the population of the village.

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

7. A Perusal of the letter dated 23.7.2017 (Annexure P-8) shows that it is neither speaking nor has been passed after affording an opportunity of hearing to the petitioner. Further, it was noticed that several complaints have been received regarding the present location of the vend and an FIR has also been registered in Police Station Sadar, Jind. The Deputy Commissioner, Jind had directed respondent No.3 to ensure that the liquor vend is shifted from its present location to some another suitable location away from the population of the village in view of deteriorating situation of law and order in the village. Once the respondents were directing the petitioner to shift the liquor vend from its present location to some another suitable location away from the population of the village and sealing the liquor vend, the same was required to be specifically dealt with by respondent No.4 by passing a speaking order after affording an opportunity of hearing to the petitioner.

8. 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".

9.

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.”

10. In view of the above, the letter dated 23.7.2017 (Annexure P-8) issued by respondent No.4 does not satisfy the requirements of being a reasoned order 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. Accordingly, the writ petition is allowed and the letter dated 23.7.2017 (Annexure P-8) issued by respondent No.4 is quashed. The matter is remitted to respondent No.4 to pass a fresh speaking order after affording an opportunity of hearing to the petitioner and respondents No.6 to 10 in accordance with law within a week from the date of receipt of certified copy of the order. 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

August 17, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes