

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-17628-2017

Date of Decision: 7.9.2017

Kamal Phool

...Petitioner

Versus

State of Punjab and others

...Respondents

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

PRESENT: Mr. B.D. Sharma, Advocate for the petitioner.

Mr. Jaswinder Singh, Deputy Advocate General, Punjab.

Mr. Varun Dhawan, Advocate for
Mr.K.R. Dhawan, Advocate for respondent No.5.

AJAY KUMAR MITTAL, J.

1. Through the instant 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 certiorari for quashing the order dated 16.4.2017 (Annexure P-8) passed by respondent No.3 blacklisting the petitioner for two financial years, i.e. 2017-18 and 2018-19; to quash the tender allotted to respondents No.4 and 5 for execution of the work at Zira and Makhu and to restrain respondents No.1 to 3 from executing the agreements with respondents No.4 and 5.

2. In nutshell, the facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is a contractor and deals with various departments of the Government to supply

2017-18 invited online tenders for supply of foodgrains, labour/ cartage at storage points and at PEG Godowns. In response thereto, the petitioner applied for the online tenders for Cluster Ferozepur-12. The tenders were opened on 29.3.2017 and the petitioner being L-1 was accepted by respondents No.1 to 3. Respondent No.3 vide letter dated 31.3.2017 directed the petitioner to execute the agreement and deposit the security. The tender was for ₹ 10 crores. He was granted the contract for Zira and Makhu for one year from 1.4.2017 to 31.3.2018. The petitioner executed the agreement dated 10.4.2017 (Annexure P-1) and deposited the security amount of ₹ 13,20,000/-. However, respondents No.4 and 5 interfered in the process of loading and stopped the petitioner from undertaking the work in question. The matter was brought to the notice of the officials of the PUNGRAIN, but to no effect. Unfortunately, the petitioner met with an accident on 14.4.2017 and had sustained injuries on the legs and knees and was advised complete bed rest by the doctors as is discernible from the medical certificate dated 14.4.2017 (Annexure P-2). A memo dated 14.4.2017 (Annexure P-3) was sent to the petitioner by the Inspector, PUNGRAIN directing him to give his attendance and also to provide transportation for lifting of foodgrains. On receipt of the said memo, the petitioner vide e-mail dated 14.4.2017 (Annexure P-4) informed the Inspector, PUNGRAIN, Ferozepur that he had met with an accident and would appear on the next date. However, respondent No.3 vide memo dated 14.4.2017 (Annexure P-5) directed the petitioner to immediately provide the transportation for lifting the foodgrain and to appear in person to explain the reasons for delay. Further, the Inspector, PUNGRAIN, vide memo dated 15.4.2017 (Annexure P-6) directed the petitioner to provide transportation

on 15.4.2017 for lifting of the foodgrains. Thereafter, a show cause notice dated 15.4.2017 (Annexure P-7) was issued to the petitioner for providing transportation and to appear in person on 16.4.2017 before respondent No.3. However, respondent No.3 vide order dated 16.4.2017 forfeited the security amount deposited by the petitioner and blacklisted him for two financial years, i.e., 2017-18 and 2018-19. After cancellation of the contract of the petitioner, the tender had been allotted to respondents No. 4 and 5 by respondent No.3 on 17.4.2017. Reliance has been placed upon the orders (Annexures P-9 and P-10, respectively) passed by this Court. Hence, the present writ petition.

3. The writ petition is contested by filing reply by way of affidavit of Shri Balraj Singh, District Controller, Food and Civil Supplies and Consumer Affairs, Ferozepur on behalf of respondents No.1 to 3. It was pleaded therein that the tender of the petitioner was accepted on 29.3.2017 and he was informed vide letter dated 31.3.2017 by respondent No.3 to execute the agreement and to deposit the security within three days as per the instructions of the Transportation Policy 2017-18. Since the petitioner failed to do so within the requisite period, so vide letter dated 6.4.2017, he was asked to execute the agreement and to deposit the security which he did on 10.4.2017. Thereafter, the Inspector, PUNGRAIN and respondent No.3 vide letters dated 14.4.2017 (Annexures P-3 and P-5, respectively) asked the petitioner to provide transport facilities for transportation of gunny bales at Makhu Mandi and to appear in person to explain the reasons for delay. However, neither the petitioner provided transportation nor came present and even he did not submit any reply. Thereafter, a show cause notice dated 15.4.2017 (Annexure P-7) was issued to the petitioner to appear in person

and to provide immediately transportation for gunny bales, but all in vain. Accordingly, vide order, Annexure P-8, the petitioner was blacklisted for the two financial years, i.e. 2017-18 and 2018-19 after forfeiture of his security amount under Clause 18 of the Transportation Policy 2017-18. The other averments made in the writ petition were denied and a prayer for dismissal of the same was made.

4. The primary challenge made in the writ petition is to the legality and validity of order dated 16.4.2017 (Annexure P-8) blacklisting the petitioner for two financial years, i.e. 2017-18 and 2018-19. Ancillary prayer has also been made to set aside the tender allotted to respondents No.4 and 5 for the execution of the work at Zira and Makhu with a further prayer for restraining respondents No.1 to 3 to execute agreements with respondents No.4 and 5. It was argued that respondent No.3 vide order dated 16.4.2017 (Annexure P-8) forfeited the surety amount deposited by the petitioner and blacklisted him for two financial years, i.e. 2017-18 and 2018-19 without affording an opportunity of hearing. It was also urged that the impugned order, Annexure P-8, 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 issued in violation of the principles of natural justice.

5. On the other hand, learned State counsel supported the order, Annexure P-8, passed by respondent No.3.

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 order dated 16.4.2017 (Annexure P-8) shows that it is not a speaking order and has been passed without affording an

opportunity of hearing to the petitioner. Further, it was noticed that the Inspector, PUNGRAIN, Makhu vide letter dated 14.4.2017 asked the petitioner to provide the transport facilities for transportation of bales at Makhu Centre. On the basis of the said letter, respondent No.3 vide letter dated 14.4.2017 directed the petitioner to provide the trucks for transfer of Bardana from Makhu Centre and to be present in the office on 15.4.2017 to explain the reasons for not providing the trucks. The petitioner vide e-mail dated 14.4.2017 (Annexure P-4) informed the Inspector, PUNGRAIN, Ferozepur that he had met with an accident and would appear on the next day. Thereafter, a show cause notice was issued to the petitioner to appear in person on 16.4.2017 at 11.00 AM and to provide the facilities for transportation of bales. As the petitioner neither personally appeared in the office of the District Manager, PUNGRAINS nor submitted any written reply due to the accident, it was concluded that the petitioner was unable to do the allotted work and was blacklisted for two financial years, i.e. 2017-18 and 2018-19 after forfeiting the surety amount deposited by the petitioner. Once respondent No.3 was forfeiting the surety amount and blacklisting the petitioner for two financial years, it was required to be specifically dealt with by respondent No.3 by passing a reasoned order after affording proper 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'.

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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 order dated 16.4.2017 (Annexure P-8) passed by respondent No.3 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.

11. Accordingly, the writ petition is allowed and the order dated 16.4.2017 (Annexure P-8) 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 and respondents No.4 and 5, in accordance with law within a period of one month 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

September 7, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes