

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-24363-2016

Date of Decision: 17.8.2017

M/s Bansi Lal, L-14A Licensee, Village Bhitwala Group, Lambi

...Petitioner

Versus

State of Punjab and others

...Respondents

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

PRESENT: Mr. J.S. Thind, Advocate for the petitioner.

Mr. IPS Doabia, Additional Advocate General, Punjab.

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 20.5.2016 (Annexure P-1) passed by respondent No.3 vide which six liquor vends of the petitioner at Lambi, District Muktsar Sahib have been ordered to be closed for alleged violation by one of the liquor vends and for quashing the order dated 9.9.2016 (Annexure P-3) passed by respondent No.2 imposing penalty of ₹ 5 lakhs upon the petitioner.

2. In nutshell, the facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is carrying on the business of liquor having got appropriate license issued by the

the petitioner and alleged that the salesman of the petitioner was selling the English liquor under the license of the country made liquor, further the sale/stock register and inspection note book were not produced and the stock of Indian Made Foreign Liquor (IMFL) was found at the PML vend. Accordingly, a show cause notice dated 19.5.2016 was issued to the petitioner for appearance on the next day, i.e. 20.5.2016 on which date the petitioner appeared and requested for compounding of the above said offence while admitting the fact as stated in the show cause notice though the petitioner had disputed regarding the confession of the guilt. In view thereof, respondent No.3 vide order dated 20.5.2016 (Annexure P-1) ordered for closure of the liquor vends of the petitioner for a period of one week from 20.5.2016 to 26.5.2016. Against the order, Annexure P-1, the petitioner filed an appeal on 23.5.2016 (Annexure P-2) before the respondent No.2 who stayed the operation of the order, Annexure P-1, subject to deposit of ₹ 1 lakh. Respondent No.2 vide order dated 9.9.2016 (Annexure P-3) dismissed the appeal of the petitioner and imposed additional penalty of ₹ 4 lakhs over and above the amount of ₹ 1 lakh imposed by respondent No.2 while granting the stay of the operation of the impugned order, Annexure P-1. According to the petitioner, there were licences having six liquor shops and alleged raid was conducted upon one shop whereas all the shops were closed. Hence, the present writ petition.

3. The said writ petition was contested by the respondents by filing reply by way of affidavit of Shri Jaspinder Singh-respondent No.3. It was pleaded therein that the petitioner was given ample opportunity and heard at length. It was further pleaded that the petitioner had admitted before respondent No.3 to have committed all the irregularities as

mentioned in the show cause notice and the case was decided on merits. 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 23.5.2016 (Annexure P-1) suspended the license of the petitioner for six liquor vends from 20.5.2016 to 26.5.2016. On appeal, respondent No.2, dismissed the appeal by imposing an additional penalty of ₹ 4 lakhs over and above of the previous penalty of ₹ 1 lakh imposed while granting interim stay, without affording an opportunity of hearing. According to the petitioner, there were six liquor shops which were run by the petitioner and the alleged raid was conducted upon one shop whereas all the six shops had been closed which was illegal and unsustainable. It was also urged that the impugned order, Annexure P-3, 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-3, passed by respondent No.2.

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 9.9.2016 (Annexure P-3) shows that it is not a speaking order and has been passed without affording an opportunity of hearing to the petitioner as it does not refer to any of the contentions of the petitioner as have been raised in the grounds of appeal before the said authority vide Annexure P-2. Further, it was noticed that the irregularities detected by the Deputy Excise and Taxation Commissioner,

Ferozepur Division, Ferozepur were found to be correct. The sale of IMFL was not permitted at L-14A vend. There has been no discussion on the basis of which this conclusion had been arrived at. Once respondent No.2 was imposing an additional penalty of ₹ 4 lakhs over and above of previous penalty of ₹ 1 lakh, the grounds of appeal raised before it was required to be specifically dealt with by respondent No.2 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’.

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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

Harvard 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 9.9.2016 (Annexure P-3) passed by respondent No.2 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 9.9.2016 (Annexure P-3) passed by respondent No.2 is quashed. The matter is remitted to respondent No.2 to pass a fresh speaking order after affording an opportunity of hearing to the petitioner in accordance with law within a period of two months 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