

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-9606-2014

Date of Decision: 9.10.2017

M/s Consulting Engineers Associates, Panchkula

...Petitioner

Versus

State of Haryana and others

...Respondents

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

PRESENT: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Amarpreet Singh Bains, Advocate and
Mr. Sunish Bindlish, Advocate for the petitioner.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Mr. Varun Katyal, Advocate for
Mr. D.R. Bansal, Advocate for respondent No.4.

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 show cause notice dated 23.5.2012 (Annexure P-16) and the order dated 28.1.2014 (Annexure P-40) passed by respondent No.3 debarring the petitioner from participating in future tendering for a period of three years in Haryana PWD (B&R) Department/HSRDC.

2. Put shortly, the facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is engaged in providing services in the field of Civil Engineering Projects and entered into two separate contract agreements dated 27.8.2008 and 5.3.2009 (Annexures P-1 and P-2, respectively) with the Haryana State Roads and Bridges

consultancy services for preparation of Detailed Project Reports (DPRs) for various road works in the National Capital Region (NCR) and for supervision consultancy services for construction of approaches to two lane Road Over Bridge near Kosli in Rewari District. Accordingly, the petitioner prepared and submitted the DPRs in accordance with the contract agreement, Annexure P-1 and the specifications of the Indian Road Congress and Ministry of Road Transport and Highways. Respondent No.4, the then Engineer-in-Chief of Haryana PWD (B&R) raised objections dated 20.4.2009 (Annexure P-3) to the specifications of the DPR and proposed his own specifications. The proposed specifications were objected to by the Managing Director, HSRDC vide objections dated 5.5.2009 (Annexure P-4) by stating that the specifications being proposed by respondent No.4 were not as per Indian Road Congress/Ministry of Road Transport and Highways guidelines and, therefore, neither the same would be agreed to by the Central Government appraisal agency nor the petitioner could be held responsible after allotting work to the executing agency. The DPRs submitted by the petitioner were approved by the Financial Commissioner, Haryana PWD (B&R) and thereafter submitted to the Central Roads Research Institute (in short "the Institute"), the appraise agency appointed by the NCRPB. The Institute checked the said DPRs submitted by the petitioner and forwarded the same to the NCRPB for its approval on 4.8.2009 who vide minutes of meeting dated 25.11.2009 (Annexure P-5) approved the DPRs submitted by the petitioner. Meanwhile, a separate file was moved by the Financial Commissioner, Haryana PWD (B&R) for approval of the Chief Minister/Finance Department. Upon perusal of the entire file including the noting dated 20.4.2009 recorded by respondent

No.4, the PWD Minister recorded a note dated 18.8.2009 that respondent No.4 should not create hurdles in NCR projects and that if he had any objection, he should have raised at the preliminary stage and not at the final stage. The said note of the PWD Minister was approved by the Chief Minister on 10.11.2009 (Annexure P-6). Respondent No.4 took over as the Managing Director of HSRDC in addition to the post of Engineer-in-Chief, PWD (B&R), Haryana on 26.11.2009. The HSRDC on the basis of the approved DPRs prepared by the petitioner, called for the tenders for execution of works under different packages. The financial bids of the contractors were opened and approved by the Tender Allotment Committee headed by respondent No.4. The bids were approved and the works for three packages out of the total five packages were allotted to the contractors for execution in December, 2009 while the tenders for other two packages were not allotted by the respondents at that stage. However, subsequently the work of the said two packages was also allotted at higher rates to the same contractor as earlier by re-inviting the bids. After the allotment of tenders in December, 2009, respondent No.4 insisted on a number of changes in the DPRs submitted by the petitioner and approved by the Department of PWD (B&R) and the Institute which were objected to by the petitioner in various meetings. Due to raising of objections by the petitioner, the petitioner was warned by the HSRDC vide letters dated 7.7.2010 and 13.7.2010 (Annexure P-7 Colly). The said letters were duly replied by the petitioner vide letter dated 3.8.2010 (Annexure P-8). Thereafter, a notice dated 13.8.2010 (Annexure P-9) was issued to the petitioner to show cause as to why it should not be debarred for not agreeing to the revised specifications decided at the instance of respondent No.4.

Vide letter dated 28.9.2010 (Annexure P-10), the petitioner was once again asked to submit its reply to the said show cause notice. The petitioner submitted its reply dated 11.10.2010 (Annexure P-11) to the said show cause notice. In the meantime, the petitioner was forced to change the DPRs as desired by respondent No.4. It was duly notified by the petitioner to the HSRDC that the changes in approved DPRs besides not being as per Indian Road Congress guidelines would also result in causing loss to the State Exchequer. However, the HSRDC and respondent No.4 proceeded further on the basis of the revised specifications. The revised DPRs of the petitioner, so finalized in compliance of instructions from respondent No.4 were taken up by the HSRDC for implementation through their independent executing agencies/contractors and the other supervision consultants in which the petitioner had no role to play. The execution of work of Gurgaon District qua first contract was being carried out under the supervision of M/s MSV International, New Delhi, the Supervision Consultant, who was blacklisted by respondent No.4 vide order dated 9.11.2011 (Annexure P-12). The said order of blacklisting was challenged by way of CWP-749-2012. However, respondent No.4 issued a letter dated 13.1.2012 (Annexure P-13) to the petitioner. The said letter was duly replied by the petitioner vide letter dated 19.1.2012 (Annexure P-14). This Court vide order dated 10.5.2012 (Annexure P-15) quashed the order, Annexure P-12. Respondent No.4 issued another notice dated 23.5.2012 (Annexure P-16) to the petitioner to show cause within ten days as to why it should not be blacklisted as DPR and Supervision Consultant. The respondents filed written statement dated 20.4.2012 (Annexure P-17) in the said writ petition.

As regards the second contract agreement dated 5.3.2009, Annexure P-2, the

construction work had been allotted to M/s NKG Infrastructure Pvt. Ltd. and the petitioner was to supervise the same. The services were being provided by the petitioner and being paid for the same as per the contract agreement from March, 2009 to December, 2009. However, from December, 2009, after taking over as Managing Director, HSRDC by respondent No.4, no payment was released to the petitioner as per the contract agreement. The Deputy General Manager-IV, HSRDC vide letter dated 28.12.2009 (Annexure P-18) instructed the petitioner to release the payment of sub standard work executed by the contractor and rejected by the Executive Engineer, Rewari and vide letter dated 16.2.2010 (Annexure P-19) warned the petitioner not to deduct the payment of the executing agency for the defective works rejected by the petitioner which was objected by the petitioner vide letter dated 24.2.2010 (Annexure P-20). The petitioner vide letter dated 16.2.2010 (Annexure P-21) pursued the matter of reduction and withholding of its due payment with respondent No.4 who refused to disburse the dues of the petitioner. Thereafter, the petitioner vide letter dated 26.3.2010 (Annexure P-22) intimated respondent No.4 for termination of the said contract agreement in terms of Clause 2.9.2 (a) of the contract agreement, Annexure P-2. The petitioner again vide letter dated 1.6.2010 (Annexure P-23) conveyed its intention to terminate the contract. Again vide letter dated 17.8.2010 (Annexure P-24), the petitioner showed its inability to continue work on the project in the absence of release of its dues. The Deputy General Manager, HSRDC vide letter dated 27.8.2010 (Annexure P-25) to respondent No.3 informed that the petitioner was entitled to payment and asked for approval for release of the withheld payment. Respondent No.3 vide letter dated 1.9.2010 authorized the

Deputy General Manager, HSRDC, Rohtak to release the pending dues of the petitioner upto date for the services provided by it in terms of the contract agreement. Despite the aforesaid, the payments for the period May to August, 2010 only were released and part payment reduced for the period from April, 2008 to April, 2009 was not released. The said fact was brought to the notice of the respondents by the petitioner vide letter dated 13.10.2010 (Annexure P-27). Thereafter, as no amount was released, the petitioner terminated the contract agreement, Annexure P-2, vide letter dated 17.10.2010 (Annexure P-28). After termination of the said contract, the petitioner once again pressed for release of its dues and respondent No.3 vide letter dated 28.12.2010 (Annexure P-29) directed the Deputy General Manager, HSRDC, Rohtak to release the payments of the petitioner, but to no effect. In January, 2012, the respondents opened the bridge to traffic under their own supervision without the petitioner being associated with it. Vide proposal dated 9.3.2012 (Annexure P-30), it was proposed to debar the petitioner for two years upto 31.3.2014 and to issue a show cause notice for the said purpose. The said proposal for debarring the petitioner was got approved from the Chief Minister on 4.4.2012 (Annexure P-31). Thereafter, a show cause notice dated 23.5.2012 (Annexure P-16) was issued to the petitioner who submitted its interim reply dated 5.6.2012 (Annexure P-32) to the respondents for reviewing their decision. The final reply dated 6.7.2012 (Annexure P-33) was also submitted by the petitioner to respondent No.3. In continuation of the reply, a letter dated 26.12.2012 (Annexure P-34) was sent by the petitioner. Vide letter dated 3.12.2012 (Annexure P-35), the petitioner was called for personal hearing. A number of hearings were held by the respondents under the Chairmanship of

respondent No.4 from 14.12.2012 to 16.4.2013 to blacklist the petitioner as is clear from the minutes of the meetings (Annexure P-7 Colly). Since the dues of the petitioner were not released, the petitioner vide letter dated 27.2.2013 invoked clause 9.2.1(b) of the agreement for referring the matter to the Arbitrator. However, the respondents invoked Clause 9.2.1(a) of the agreement and appointed the Arbitrator without the consent of the petitioner which was duly objected to by the petitioner. The objection of the petitioner to the appointment of Arbitrator by the respondents without its consent was upheld by the Legal Counsel of the respondents on 3.10.2013 (Annexure P-37). The petitioner vide letter dated 7.1.2014 (Annexure P-38) informed respondent No.4 that they did not accept the Arbitration Tribunal constituted by the Engineer-in-Chief, Haryana PWD (B&R) and the proceedings being undertaken by the Arbitrator shall be void and without jurisdiction. The Arbitrator expressed his inability to proceed further with the case and returned the file to respondent No.4 vide letter dated 21.1.2014 (Annexure P-39) for appropriate action. However, respondent No.3 vide order dated 28.1.2014 (Annexure P-40) debarred the petitioner from participating in future tendering for a period of three years in Haryana PWD (B&R)/HSRDC. Hence, the present writ petition.

3. The writ petition is contested by the respondents by filing separate written statements. It has been pleaded herein that major deficiencies were observed in the services provided by the petitioners for both the contract agreements and the same were clearly indicated in the show cause notice, Annexure P-16 issued to the petitioner. There was a complete lack of supervision on the part of the petitioner in the construction of ROB at Kosli which resulted into fall of a portion of deck-slab on

30.1.2012. Further, it was pleaded that the petitioner did not pass the pending bills of the executing agency M/s NKG Infrastructure Limited, New Delhi inspite of repeated requests made by the said agency and the respondents as is discernible from the letter dated 28.12.2010 (Annexure R-XII). A number of letters were written to the petitioner by the respondents but the petitioner did not comply with the instructions of the respondents and unilaterally notified the termination of the contract agreement under Clause 2.9.2 (a) of the contract agreement vide its letter dated 26.3.2010 (Annexure P-22). 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 28.1.2014 (Annexure P-40) had debarred the petitioner for participating in future tendering for a period of three years 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 State counsel and learned counsel for respondent No.4 supported the order, Annexure P-40, passed by respondent No.3 for debarring the petitioner for a period of three years from participating in future tendering.

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

7. The effective part of the order dated 28.1.2014 (Annexure P-40) passed by respondent No.3 reads thus:-

“..... Whereas, after going through your written reply and verbal submissions, the competent authority have arrived at the conclusion that there was a serious carelessness and lackness on your part in preparation of DPRs and in carrying out Supervision Consultancy of Road Over Bridge (ROB).

In these circumstances, you deserve to be debarred for participating in future tendering for a period of 3 years in Haryana PWD B&R/HSRDC to meet with the requirement of justice and has been decided accordingly by the competent authority.”

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 noticed that there was a serious carelessness and lackness on the part of the petitioner in preparation of Detailed Project Reports (DPRs) and in carrying out Supervision Consultancy of Road Over Bridge (BOR). On the said premise, the petitioner was debarred for a period of three years for participating in future tendering. Once respondent No.3 was debarring the petitioner from participating in future tendering, the same was required to be specifically dealt with by passing a speaking order after affording proper 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 28.1.2014 (Annexure P-40) passed by respondent No.3 debarring the petitioner from participating in future tendering for a period of three years 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 28.1.2014 (Annexure P-40) passed by respondent No.3 is quashed.

The matter is remitted to respondent No.3 to pass a fresh speaking order after affording proper opportunity of hearing to the petitioner and respondent No.4 in accordance with law.

13. Vide interim order dated 23.5.2014, a direction was issued that the impugned order dated 28.1.2014 will not come in the way of the petitioner's submitting tender bid to different authorities which shall be subject to the final outcome of the main writ petition. It was pointed out by the learned counsel for the petitioner that the petitioner had participated in the tenders in pursuance to the aforesaid interim order and was awarded contracts as well which are either in progress or have been completed. In such circumstances, a prayer was made that the said interim order be made absolute.

14. The prayer of learned counsel for the petitioner appears to be justified. Accordingly, the interim order dated 23.5.2014 is made absolute meaning thereby, the tenders in respect of which the petitioner has participated and was successful would not be affected by virtue of the impugned order dated 28.1.2014 (Annexure P-40).

15. 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

October 9, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes