

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-928-2016

Date of Decision: 6.12.2017

Ludhiana Stock Exchange Ltd., Ludhiana

...Petitioner

Versus

Municipal Corporation, Ludhiana and others

...Respondents

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

PRESENT: Ms. Tarun Jain Sinha, Advocate for the petitioner.

Mr. Harsh Aggarwal, Advocate for respondents No.1 and 2.

AJAY KUMAR MITTAL, J.

1. By way of instant 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 setting aside the order dated 20.2.2013 (Annexure P-7) passed by respondents No.1 and 2 whereby they have reopened the already finalized house tax assessment of the previous years, i.e. 2007-08 to 2012-13 and have raised fresh demand of ₹ 50,48,795/- qua property No. B-26, 751/133, situated at Feroze Gandhi Market, Ludhiana and the order dated 25.2.2015 (Annexure P-9) vide which the appeal filed by the petitioner was dismissed by respondent No.3. Further, a writ of mandamus has been sought directing the respondents to refund the amount of ₹ 50,48,795/- paid to the respondents under protest by the petitioner.

petition as narrated therein may be noticed. The petitioner was paying the house tax regularly and also paid the house tax for the years 2009-10 and 2012-13 as is clear from the receipts (Annexures P-1 and P-2, respectively). The Municipal Corporation had also issued 'No Due Certificate' dated 29.5.2007 (Annexure P-3) in this regard. Respondent No.1 issued a notice dated 15.10.2010 (Annexure P-4) under Section 103/108 of the Punjab Municipal Corporation Act, 1976 (in short "the Act") to the petitioner and had reopened the already finalized house tax assessment of the previous years and for enhancement of house tax for the years 2001-02 to 2010-11. On receipt of the notice, Annexure P-4, the petitioner filed objections dated 30.11.2010 (Annexure P-5) against the proposed amendment of assessment. The petitioner also filed detailed reply dated 8.2.2011 (Annexure P-6) against the notice, Annexure P-4, stating that the proposed amendment can only be carried out for the financial year 2010-11 and not for the years 2001-02 to 2009-10 as the notice was issued on 15.10.2010. However, respondent No.2 vide order dated 20.2.2013 (Annexure P-7) revised the assessment with retrospective effect and also for the future years, i.e. 2011-12 and 2012-13 and directed the petitioner to pay difference of house tax amounting to ₹ 50,48,795/-. Vide letter dated 8.4.2013 (Annexure P-8), the petitioner deposited the said amount by way of demand draft No. 053762 dated 8.4.2013 under protest. The petitioner also filed an appeal against the order, Annexure P-7, before respondent No.3 who vide order dated 25.2.2015 (Annexure P-9), dismissed the said appeal. Hence, the present writ petition.

3. The writ petition is contested by respondents No.1 and 2 by filing a written statement. It was pleaded therein that as per the official

record, the actual rental value of the property in question was assessed at ₹ 45,79,236/- during the financial year 2000-01. However, the actual rental value was enhanced during the financial year 2002-03 and the property in question was assessed at ₹ 1,40,91,840/- in the financial year 2003-04. It was further pleaded that during the financial year 2010-11, the rent shown in the rent deed was less and, therefore, a notice under Section 108 of the Act was issued to the petitioner on receipt of the copies of the agreements from the tenants. On receipt of the notice, the petitioner filed objections. Respondent No.2 finalized the revised assessment for the period from 2007-08 to 2012-13 vide order dated 20.2.2013 (Annexure P-7) and directed the petitioner to pay the difference of house tax of ₹ 50,48,795/-. Against the said order, Annexure P-7, the petitioner filed appeal which was also dismissed by respondent No.3 vide order dated 25.2.2015 (Annexure P-9). 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 no house tax could have been levied retrospectively for the assessment years 2007-08, 2008-09 and 2009-10 when the notice was issued in the year 2010 effective from 1.4.2010. It was further submitted that vide orders dated 20.2.2013 (Annexure P-7) and dated 25.2.2015 (Annexure P-9), no reasons have been recorded while declining the claim of the petitioner. It was also urged that the impugned orders do not satisfy the test of being a reasoned and speaking one and were, thus, liable to be quashed. It was further submitted that the impugned orders have been passed in violation of the principles of natural justice.

5. On the other hand, learned counsel for respondents No.1 and 2

has supported the orders, Annexures P-7 and P-9, respectively, passed by the respondents.

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

7. The assessee had primarily disputed the demand raised by the respondents for the assessment years 2007-08 to 2009-10 on the ground that vide notice dated 15.10.2010, the liability could be created for the financial year 2010-11 and onwards. However, the respondents refuted the claim of the petitioner on the plea that there had been concealment of true rent and in such circumstances, the claim of house tax from 2007-08 onwards was justified. Once the respondents had rejected the claim of the petitioner, the same was required to be specifically dealt with by passing a speaking order dealing with all aspects of the matter after referring to the details of the rent deeds recovered by them on the basis of which house tax was sought to be revised and after affording proper opportunity of hearing to the petitioner. A perusal of the order dated 20.2.2013 (Annexure P-7) shows that it is not a speaking order which has been passed 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'.

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".

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. The orders passed by the respondents do 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.

11. In view of the above, the writ petition is allowed and the orders dated 20.2.2013 (Annexure P-7) passed by the House Tax Assessment Committee and dated 25.2.2015 (Annexure P-9) passed by respondent No.3 are quashed. The matter is remitted to the House Tax Assessment

Committee to pass a fresh speaking order in accordance with law after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of the 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

December 6, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes