

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-18079-2017

Date of Decision: 27.3.2018

M/s Northland Rubber Mills, Rai (Sonepat)

...Petitioner

Versus

Haryana State Industrial and Infrastructure Development Corporation Ltd.,
Panchkula and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

PRESENT: Mr. Chetan Mittal, Senior Advocate with
Mr. Mohinder Singh Nain, Advocate for the petitioner.

Mr. Sharad Aggarwal, Advocate for
Mr. Lokesh Sinhal, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. 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 12.1.2017 (Annexure P-26) issued by respondent No.3 vide which its request for refund of 10% of the plot cost had been rejected. Further, a writ of mandamus has been sought directing the respondents to refund the 10% of the plot cost, i.e. ₹ 1,24,76,701/- plus interest and further pay an amount of ₹ 3,34,64,482/- paid by the petitioner to the bank as interest component from 26.4.2011 till 5.1.2014 for availing the Cash Credit Limit for making the payment of installments to the respondents.

2. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. In the year 2011, Haryana State Industrial and Infrastructure Development Corporation Limited (in short “the Corporation”) framed an industrial policy for the allotment of industrial plots in the State of Haryana. In response thereto, the petitioner applied for the allotment of an industrial plot at Barhi, Phase III, vide application dated 26.4.2011 (Annexure P-1) along with various documents and the amount as required. The Corporation vide letter dated 30.5.2011 (Annexure P-2) sought certain further information which was duly replied by the petitioner vide letter dated 21.6.2011 (Annexure P-3). Vide letter dated 15.7.2011 (Annexure P-4), the Corporation called the petitioner for a meeting along with the relevant documents and vide letter dated 6.9.2011 (Annexure P-5) informed the petitioner regarding the allotment of an industrial plot in Phase III, Barhi measuring 4 acres at the tentative rate of ₹ 5500/- per square meters for setting up an industrial project of manufacturing of conveyor belts. The petitioner vide letter dated 5.10.2011 (Annexure P-6) requested the Corporation to allot a plot measuring 5½ acres instead of 4 acres and the Corporation vide letter dated 9.11.2011 (Annexure P-7) accepted the request of the petitioner for the allotment of land measuring 5½ acres. In response thereto, the petitioner submitted the requisite undertaking dated 26.11.2011 (Annexure P-8) to the Corporation who issued a Regular Letter of Allotment dated 5.1.2012 (Annexure P-9) without offer of possession (under EMP-2011). The Corporation vide letter dated 24.2.2012 (Annexure P-10) directed the petitioner to deposit a sum of ₹ 2.05 crores towards 15% of the cost of the plot along with interest for the delayed payment which was deposited by the petitioner vide letter dated 2.3.2012 (Annexure P-11) and

further amount of ₹ 2,21,000/- was deposited by the petitioner towards 14% interest vide letter dated 3.2.2012 (Annexure P-12). Thereafter, the petitioner was called for execution of the agreement vide letter dated 26.4.2012 (Annexure P-13) and the agreement dated 26.10.2012 (Annexure P-14) was executed between the Corporation and the petitioner regarding the said plot. The petitioner vide letter dated 28.2.2014 (Annexure P-15) requested the Corporation for the allotment of a plot measuring 4 acres instead of already allotted plot measuring 5½ acres. The said request of the petitioner was accepted by the Corporation vide letter dated 29.8.2014 (Annexure P-16). The Corporation vide letter dated 12.10.2015 (Annexure P-17) directed the petitioner to appear before the Estate Management Committee (EMC) on 28.10.2015 at 11.30 AM and the petitioner vide letter dated 26.10.2015 (Annexure P-17) wished to appear before the EMC. The petitioner vide letter dated 4.11.2015 (Annexure P-18) requested the Corporation not to change the location of the plot. Thereafter, the petitioner made a representation dated 26.4.2016 (Annexure P-19) to respondent No.1 for refund of ₹ 7,67,96,313/- along with interest particularly when there was no offer of possession. The Corporation vide letter dated 11.5.2016 (Annexure P-20) asked the petitioner to give its consent for offer of possession who vide letter dated 25.5.2016 (Annexure P-21) requested the Corporation to refund the amount. The Corporation in its 333rd meeting amended the EMP-2015 on 13.7.2016 (Annexure P-22). The petitioner vide letter dated 14.7.2016 followed by various reminders (Annexure P-23 Colly) requested the Corporation to refund the amount in terms of the revised EMP without any deduction. As per the statement of account dated 6.9.2016 (Annexure P-24), the petitioner received a sum of ₹ 6,43,19.612/-

as against the amount of ₹ 7,67,96,313/-. The petitioner vide letters dated 8.9.2016 and 13.10.2016 (Annexure P-25 Colly) requested the Corporation to release the amount of ₹ 1,24,76,701/- wrongly deducted from the said amount. The Corporation vide letter dated 12.1.2017 (Annexure P-26) rejected the request of the petitioner for refund of 10% of the plot cost. The petitioner vide representation dated 31.1.2017 (Annexure P-27) requested the Corporation to review its decision and to refund 10% of the plot cost, but to no effect. Thereafter, the petitioner sought some information under the Right to Information Act, 2005 vide application dated 17.3.2017 (Annexure P-28) and the notings, Annexure P-29, were supplied to the petitioner. Hence, the present writ petition.

3. The writ petition is contested by the respondents by filing a written statement. It has been pleaded therein that the plot was not offered to the petitioner due to non-availability of infrastructure in Phase III, Barhi. However, the said plot was allotted to the petitioner on the submission of an undertaking to take the physical possession of the plot on 'as is where is basis'. The petitioner approached the Corporation to surrender the said plot vide letter, Annexure P-19 on account of non-offer of possession whereas as per the site report dated 4.4.2016, basic infrastructure facilities were completed at the site to the extent of 90% and only 10% were to be completed. Further, the petitioner did not agree to accept the offer of possession which was confirmed vide letter dated 25.5.2016 (Annexure P-21). It was also pleaded therein that the request of the petitioner for non-deduction of 10% of the plot cost for surrender of plot after approval from change of plot with reduced size was examined by the Corporation and it was observed that EMP-2015 was silent on this aspect. Therefore, the

request of the petitioner for refund of 10% of the plot cost was rejected by the Corporation. 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 letter dated 12.1.2017 (Annexure P-26) had rejected the request of the petitioner for refund of 10% plot cost 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 order has been passed in violation of the principles of natural justice.

5. On the other hand, learned counsel for the respondents supported the letter, Annexure P-26, issued by respondent No.3 and submitted that the request of the petitioner for refund of 10% of plot cost was rightly rejected.

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

7. The letter dated 12.1.2017 (Annexure P-26) issued by respondent No.3 reads thus:-

“This has reference to your letter received on above noted subject. In this regard, it is to inform you that your request for refund 10% of plot cost has been considered but not acceded to.”

8. A perusal of the above letter shows that it is not a speaking order which has been passed after affording an opportunity of hearing to the petitioner. It was noticed that the request of the petitioner for refund 10% plot cost was considered but not acceded to. Once the respondents were

rejecting the claim of the petitioner, the same was required to be specifically dealt with by respondent No.3 by passing a speaking order and after affording an 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 'rubber stamp 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 letter dated 12.1.2017 (Annexure P-26) issued by respondent No.3 rejecting the request of the petitioner for refund of 10% plot cost 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 letter dated 12.1.2017 (Annexure P-26) issued 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 in accordance with law. 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

March 27, 2018
gbs

(ANUPINDER SINGH GREWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes