

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-26670-2016

Date of Decision: 22.3.2018

M/s Shine Buildcon Private Ltd., New Delhi

...Petitioner

Versus

State of Haryana and another

...Respondents

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

PRESENT: Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Sandeep Moudgil, Additional Advocate General, Haryana.

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 orders dated 6.5.2016 (Annexure P-7) passed by respondent No.2 rejecting the representation of the petitioner for waiver of interest on payment of EDC amount, dated 10.6.2016 (Annexure P-9) and dated 30.9.2016 (Annexure P-14) passed by respondent No.1 dismissing the appeal of the petitioner. Further, a writ of mandamus has been sought directing the respondents to forebear from charging interest from the petitioner on EDC amount for the period from 22.4.2013 to 21.5.2015 and to restrain the respondents from withholding permissions and sanctions against the licence issued to the petitioner on account of non-waiver of interest.

petition as narrated therein may be noticed. The petitioner was owner of the land measuring 2.893 acres situated in Sector 70, Gurgaon Manesar Urban Complex and applied for and was granted Licence No.34 of 2012 by the respondents to set up a commercial colony under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Urban Development and Regulations of Urban Areas Rules, 1976. The petitioner deposited demand draft dated 29.1.2013 amounting to ₹ 6.25 crores in favour of the Chief Administrator, HUDA on account of External Development Charges (EDC) with respondent No.2 vide letter dated 18.4.2013 (Annexure P-1). The said draft was acknowledged by respondent No.2 vide acknowledgment dated 22.4.2013. The petitioner vide letter dated 7.4.2015 requested respondent No.2 for approval to revised zoning plans. In response thereto, respondent No.2 vide letter dated 30.4.2015 (Annexure P-2) informed the petitioner that the revision of zoning plan was under consideration for approval and that the said demand draft was returned vide office memo dated 16.5.2013. As per the certificate dated 6.5.2015 (Annexure P-3), issued by the HDFC Bank, the said demand draft issued in favour of the Chief Administrator, HUDA had neither been cancelled by the petitioner nor presented by the Chief Administrator, HUDA. Further, the petitioner vide letter dated 6.5.2015 (Annexure P-4) requested the HDFC Bank for cancellation of the said demand draft who vide letter dated 11.5.2015 certified that the cancellation of amount was transferred in the account of the petitioner on 7.5.2015. Thereafter, the petitioner got prepared fresh demand draft dated 16.5.2015 amounting to ₹ 6.25 crores towards the payment of EDC and deposited the same vide letter dated 18.5.2015 (Annexure P-5). According to the petitioner, it had

discharged its liability and the penalty by way of interest @ 15% per annum from 23.4.2015 to 23.5.2015 could not have been imposed. The petitioner vide reminders dated 16.7.2015, 29.7.2015, 17.11.2015 and 14.3.2016 (Annexure P-6 Colly) requested respondent No.2 for waiver of interest. However, respondent No.2 vide order dated 6.5.2016 (Annexure P-7) declined the request of the petitioner for waiver of interest. Against the order, Annexure P-7, the petitioner filed an appeal on 12.5.2016 (Annexure P-8) and respondent No.1 vide order dated 10.6.2016 (Annexure P-9) dismissed the said appeal. Vide letter dated 15.6.2016 (Annexure P-10), the petitioner requested for fixing a date in the appeal for hearing. Further, vide letter dated 23.6.2016 (Annexure P-11), the petitioner brought to the notice of respondent No.1 regarding the policy to encash every draft when deposited with it, present it for clearing on the very next day. The petitioner vide letter dated 28.7.2016 (Annexure P-12) requested for production of record on the revised date of hearing of the appeal fixed for 26.8.2016. The hearing of the appeal was re-scheduled to 26.8.2016, but the Court was not held on that date. Vide letter dated 7.10.2016 (Annexure P-13), the order dated 30.9.2016 was received by the petitioner. Respondent No.1 vide order dated 30.9.2016 (Annexure P-14) dismissed the said appeal. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that respondent No.2 vide order dated 6.5.2016 (Annexure P-7) had rejected the representation of the petitioner for waiver of interest on payment of EDC without affording an 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. Prayer was also made for quashing the orders (Annexures P-9 and P-14, respectively) dismissing the appeal of the petitioner.

4. On the other hand, learned counsel for the respondents supported the order, Annexure P-7, passed by respondent No.2 declining the request of the petitioner for waiver of interest on payment of EDC deposited on 22.4.2013.

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

6. The order dated 6.5.2016 (Annexure P-7) passed by respondent No.2 reads thus:-

“Your request under reference has been examined and I am directed to intimate you that the request of waiver of interest (from 23.4.2013 to 21.5.2015) on payment of ₹ 6.25 crore of EDC against License No.34 of 2012 dated 15.4.2012 in Sector 70, Gurgaon Manesar Urban Complex, has been rejected.”

7. A perusal of the above order 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 waiver of interest (from 23.4.2013 to 21.5.2015) on payment of ₹ 6.25 crore of EDC against License No.34 of 2012 dated 15.4.2012 in Sector 70, Gurgaon Manesar Urban Complex, has been rejected. Once respondent No.2 was rejecting the claim of the petitioner, the same was required to be specifically dealt with by respondent No.2 by passing a speaking order and 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 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 "vacate 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."

No.2 rejected the request of the petitioner for waiver of interest on the payment of EDC 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.

11. In view of the above, the writ petition is allowed and the order dated 6.5.2016 (Annexure P-7) passed by respondent No.2 is quashed. Consequential, the orders dated 10.6.2016 (Annexure P-9) and dated 30.9.2016 (Annexure P-14) dismissing the appeal of the petitioner are also 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. 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 22, 2018
gbs

(ANUPINDER SINGH GREWAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes