

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-7709-2018 (O&M)

Date of Decision: 16.5.2018

Sahil Alloys and Machine Tools (P) Ltd., Batala

....Petitioner.

Versus

Union of India and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

PRESENT: Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh Meho, Advocate for the petitioner.

Mr. Saurabh Goel, Advocate for the respondents.

AJAY KUMAR MITTAL, ACJ.

CM-7308-2018

Rejoinder to the written statement on behalf of respondents
No.1 to 5 filed along with the application is taken on record subject to all
just exceptions. CM stands disposed of accordingly.

CWP-7709-2018

1. By way of instant 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 15.4.2017
(Annexure P-22) passed by respondent No.2 cancelling its supply order; the
show cause notice dated 23.9.2017 (Annexure P-25) and the subsequent

final order dated 24.11.2017 (Annexure P-27) debarring the petitioner from participating in tender inquiry for a period of two years.

2. Briefly stated, the facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner earlier had manufactured and delivered high end machines especially CNC 2 way Angular Boring Machine on turn key basis to Eastern Railways and another high end machine was delivered in time to Steel Authority of India as is clear from the performances letters dated 3.2.2014 and 7.9.2016 (Annexure P-1 Colly). The petitioner had not only successfully manufactured but also delivered similar machine worth ₹ 3.8 crores in time to respondent No.1 vide order dated 3.2.2014 (Annexure P-2). In the year 2012, respondent No.2 initially floated tender for 2 Nos. SB CNC Turning Centre. The petitioner and other companies applied for the same. The other companies could not qualify and the petitioner being the sole bidder, the tender was not proceeded with. Again vide tender notice dated 28.2.2013 (Annexure P-3), respondent No.2 invited the tenders for manufacturing of under the concept of Make in India Programme as visualized the Prime Minister of India. After qualifying the technical and financial bids, respondent No.2 awarded the contract to the petitioner after due inspection of works. Respondents No.1 and 2 vide supply order dated 11.9.2015 (Annexure P-4), awarded the contract to the petitioner for manufacturing of SB CNC Turning Centre-02 Nos. The said contract was awarded to the petitioner after a period of three years. Respondent No.2 vide letter dated 21.12.2015 asked the petitioner for early delivery of the supply order. According to the petitioner, the machines were tailor made as per order/demand, no part of the said machine was readily available and was to be

assembled after importing various parts from all over the world including from Siemens Germany. The petitioner vide letter dated 29.12.2015 (Annexure P-5) requested respondent No.2 for issuance of the components for trial during Pre Dispatch Inspection (PDI) on the premises of the petitioner on returnable basis. Respondent No.2 vide letter dated 16.1.2016 (Annexure P-6) informed the petitioner that the necessary arrangements for providing the component was in progress. A meeting of the petitioner and respondents No.3 to 5 was fixed for 8.2.2016 and the minutes of meeting dated 8/9.2.2016, machine design, the GA design, the list of component ordered as per supply order were got approved and signed by respondents No.3 to 5 as is clear from the minutes of meeting dated 8/9.2.2016 (Annexure P-7 Colly). Thereafter, respondent No.2 vide letter dated 6.4.2016 (Annexure P-8) affirmed 'no changes' in the proposed GA Drawings. The meeting of respondents No.3 to 5 and the petitioner was held and as per the minutes of the meeting dated 23.9.2016 (Annexure P-9), the readiness of the machine, specification of components to be used as per initial order were shown to them. However, respondents No.3 to 5 verbally directed the petitioner to change CNC Servo Motor to be received in couple of days from 27 NM (with break) to CNC Servo Motor. The petitioner agreed to do the same without any additional charges and sought extension of the date of delivery which was granted vide letter dated 5.10.2016 (Annexure P-10). The petitioner placed a revised purchase order dated 27.10.2016 (Annexure P-11) of the CNC DSL System with 36 NM power to the Siemens. In response thereto, the Siemens vide letter dated 18.11.2016 (Annexure P-12) informed the petitioner that the delay had been caused because of change in the CNC Servo Motor from 27 NM to 36 NM/

upgraded. Vide letter dated 21.11.2016 (Annexure P-13) the petitioner again sought extension of the date of delivery from respondent No.2 as all the other components had been received and only the demanded/changed Servo Motor and Axis was awaited. Respondents No.3 to 5 again visited the premises of the petitioner and as per the minutes of the meeting dated 24.11.2016 (Annexure P-14), they were informed about the list of newly ordered parts including the changed Servo Motor of 36 NM from Siemens was awaited. On 24.11.2016, just a day before the completion of the contract, respondents No.3 to 5 demanded changes in the GA design of the machine. The petitioner revised the design on that very day after joint sitting of both the sides and provided the revised GA drawing as is clear from the letter dated 24.11.2016 (Annexure P-15). As per the revised GA design, the width of the machine was increased and the length was reduced. Respondent No.1 vide letter dated 16.2.2017 (Annexure P-16) extended the delivery period till 20.3.2017 with LD and also issued performance notice to the petitioner vide the said letter. The petitioner vide letter dated 26.2.2017 (Annexure P-17) requested the respondents to send the trial component in order to develop the tolling for the machine and to allocate clear space at earmarked site to start foundation work of machine. Further, the petitioner vide letter dated 2.3.2017 (Annexure P-17) asked the respondents to see the trial of machine on a PLCC trial panel till the changed CNC Servo Motors, but to no effect. Respondents No.3 to 5 visited the petitioner on 10.3.2017 and found the progress of the machine. The petitioner vide letter dated 10.3.2017 (Annexure P-18) reassured respondents No.3 to 5 of best efforts and also sent the list of changed components which were re-ordered/purchased showing their expected time of delivery as informed to

the petitioner vide email dated 8.3.2017 (Annexure P-18) by the official agent of Siemens Germany. Since the tentative PDI of both the machines was for 20.5.2017, the petitioner vide letter dated 14.3.2017 (Annexure P-19) again requested the respondents for sending the trial component which would be required to make a trial run. Before the expiry of extended delivery period, the petitioner vide letter dated 18.3.2017 (Annexure P-20) informed respondents No.3 to 5 about the completion of machine assembly and requested for approval of GA designs which was a pre-requisite for final trial run of the machine. Vide letters dated 29.3.2017, 10.4.2017 and 12.4.2017 (Annexure P-21 Colly), the petitioner informed the respondents about the receipt of the siemens component and the same was under assembly work and requested for approval of GA drawings, but to no effect. However, respondent No.2 vide order/letter dated 15.4.2017 (Annexure P-22) cancelled the contract of the petitioner. The petitioner vide letters dated 18.4.2017, 24.4.2017, 26.4.2017, 3.5.2017 and 18.8.2017 (Annexures P-23 and P-24, respectively) requested respondents No.1 and 2 to revoke the order/letter dated 14.4.2017 (Annexure P-22) cancelling the supply order, but all in vain. Thereafter, respondent No.2 issue a show cause notice dated 23.9.2017 (Annexure P-25) to the petitioner as to why suitable action should not be taken against the firm. The petitioner replied the said show cause notice vide reply dated 5.10.2017 (Annexure P-26). However, respondent No.2 vide order dated 24.11.2017 (Annexure P-27) debarred the petitioner from participating in any tender enquiry of plant and machinery for a period of two years. Hence, the present writ petition. Upon notice of motion having been issued, the respondents filed a written statement controverting the averments made in the writ petition. It was pleaded therein

that the supply order was issued to the petitioner for manufacturing and supply of SBCNC-Turning Centre -02 Nos and the delivery period was granted upto 25.9.2016 after which three extensions were granted and final extension was upto 20.3.2017. Having failed in the supply of the machine, the supply order was cancelled. As per Clause 17(k) of the Supply Order, any dispute between the parties was to be referred to the Arbitrator. It was further pleaded that a show cause notice dated 23.9.2017 (Annexure P-25) was issued to the petitioner who submitted its reply dated 5.10.2017 (Annexure P-26). Thereafter, the order, Annexure P-27, debarring the petitioner from participating in the tenders enquiry for a period of two years was passed. The other averments made in the writ petition were denied and a prayer for dismissal of the writ petition was made.

3. Learned counsel for the petitioner submitted that respondent No.2 vide order dated 24.11.2017 (Annexure P-27) had debarred the petitioner for a period of two years from participating in the tender enquiry without issuance of any notice and without affording an opportunity of hearing. It has further been urged that the impugned order does not satisfy the test of being a reasoned and speaking order and is, thus, liable to be quashed. It has also been submitted that the impugned order has been passed in violation of the principles of natural justice.

4. On the other hand, learned counsel for the respondents supported the order passed by respondent No.2 and prayed for dismissal of the writ petition.

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 24.11.2017 (Annexure P-27) impugned herein

reads thus:-

“With reference to the above, it is intimated that your firm M/s Sahil Aloys & Machine Tolls (P) Ltd. Batala has been banned/debarred from participation in tender enquiry of plant and machinery at OFM for two years from the date of issue of this letter.”

7. A perusal of the above order shows that it is neither speaking nor gives any cogent reasons for debarring the petitioner. Moreover, it has been passed without affording any opportunity of hearing to the petitioner. Respondent No.2 had only mentioned that the petitioner had been banned/debarred from participation in tender enquiry of plant and machinery at OFM for two years from the date of issue of the said order. Once the respondents were debarring the petitioner from participation in the tender enquiry of plant and machinery at OFM for a period of two years, respondent No.2 was required to pass a speaking reasoned order after affording an opportunity of hearing to the petitioner. The respondents have failed to adhere to this legal requirement, therefore, Annexure P-27 is legally unsustainable.

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 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 thou 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 24.11.2017 (Annexure P-27) 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. Accordingly, the writ petition is allowed and the order dated 15.4.2017 (Annexure P-22) cancelling the supply order of the petitioner and the subsequent order dated 24.11.2017 (Annexure P-27) passed by respondent No.2 debarring the petitioner from participating in the tender enquiry for a period of two years 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. 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)
ACTING CHIEF JUSTICE**

May 16, 2018
gbs

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes