

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6066 of 2019

1. Kedar Nath Upadhyay, S/o Late Shri Laxman Prasad Upadhyay, Aged About 59 Years, Working As Senior Horticulture Development Officer, Block- Mungeli, District: Mungeli, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through - The Secretary, Department Of Panchayat And Rural Development, Govt. Of Chhattisgarh, Mahanadi Bhavan, P.O. Rakhi, Naya Raipur, District: Raipur, Chhattisgarh
2. The Directorate Of Horticulture And Farm Forestry Through- Its Director, Office Of The H.O.D., 2nd Block, 4th Floor, Indravati Bhavan, Naya Raipur Chhattisgarh

---Respondents

For Petitioner	:	Mr. M.P.S. Bhatia, Advocate
For State	:	Mr. Jitendra Pali, Dy. Adv. General and Mr. Ayaz Naved, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

22.08.2019

1. The challenge in the present Writ Petition is to the order Annexure P-1 dated 22.06.2019, whereby the Appellate Authority has rejected the appeal of the petitioner, so far as imposing penalty of Rs. 1,09,346/- is concerned. The whole dispute in the instant case revolves around the order of recovery which was issued by the Respondent No. 2 vide order dated 13.06.2016, vide the said order, the petitioner has held responsible for the damages and excess amount spent in the expenditure towards gap filling programme. The amount assessed against the petitioner is Rs. 1,09,346/-.

2. The petitioner initially had challenged the said order of director before the High Court in WPS No. 2798 of 2016 and the said Writ Petition was disposed off on 11.07.2016, whereby the Writ Petition was disposed off directing the petitioner to avail other remedies available.
3. The petitioner, thereafter preferred an appeal which now stands decided by the impugned order Annexure P-1 dated 22.06.2019.
4. The primary challenge of the petitioner assailing the order is that, the order of Appellate Authority is totally without application of mind, without giving any reasons and without considering the specific ground that the petitioner had raised in the appeal.
5. The petitioner herein had taken specific ground that the petitioner is directly or indirectly not responsible for the excess/extra expenditure incurred in the gap filling programme.
6. According to the petitioner, during the relevant period of time he was working as a Rural Horticulture Extension Officer and that he was not in any manner responsible for either purchase of the plants nor was he responsible in any manner for the expenditure incurred in the said programme.
7. According to him, whatever plants were purchased by the higher authorities was received by him and it was thereafter handed over to the N.G.O. who were entrusted with the work of gap filling. The order of the appellate authority does not find any discussion, so far as this ground that the petitioner has raised nor does it seem that the appellate authority got it verified from the record. Moreover, the

impugned order and the first order of recovery also is silent on the aspect as to how the petitioner is responsible for the said amount, which is being ordered to be recovered from the petitioner.

8. This ground of the petitioner has not been dealt with by the Appellate Authority nor has it been discussed in any manner, though the Appellate Authority has acknowledged that, this in fact is the ground in appeal.
9. The State Counsel on going through the impugned order of the Appellate Authority does not dispute the fact that, it lacks reasons and it also does not discuss the contention which the petitioner had raised while challenging the order of recovery.
10. Though, the Appellate Authority while disposing off the appeal has held that all these appellants were in fact posted at the relevant place and therefore have been held responsible but the records attached to the writ petition speak differently.
11. It is by now, a well settled position of law when an administrative authority decides any matter, particularly sitting on the appellate side, the order passed by the Appellate Authority has to be reasoned speaking order. The very purpose of having a remedy of appeal is that, the delinquent gets an opportunity to approach higher authorities in the department to show the irregularities, illegality or any other error that has been crept in the original order passed.
12. Once the matter was sent back to the authorities concerned, especially by the High Court, the authorities should have taken extra care while deciding the claim of the petitioner and ought to have

given reasons and the provisions of the Rules under which the order was being passed. The impugned order does not disclose application of mind to the grievance and contentions of the petitioner. The authority was duty bound to give independent conclusions on his decisions. Specific reasons should have been given on his findings.

13. In the case of ***East Coast Railway and Another vs. Mahadev Appa Rao and Others with K. Surekha vs. Mahadeo Appa Rao and Others*** (reported in **2010 (7) SCC 678**), the Supreme court in a very categorical terms has held that Arbitrariness in making of an order by an authority can manifest itself in different norms. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary, hence legally unsustainable. In the absence of reasons in support of the order, it is difficult to assume that the authority had properly applied its mind before passing of the order.

14. Likewise, again in case of ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. Shukla and Brothers*** (reported in **2010 (4) SCC 785**), the Supreme Court has held that “recording of reasons is an essential feature of dispensation of justice. Reasons are the soul of orders. Non-

recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighted with the authority in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that order.”

15. For the foregoing reasons, the impugned order deserves to be and is accordingly set aside. The matter is remanded to the authority concerned for passing an order afresh, so far as the disputed periods are concerned.
16. In view of the aforesaid legal position, the impugned order Annexure P-1 dated 22.06.2019 is not sustainable and the same deserves to be and is, accordingly set-aside/quashed and the matter stands remitted back to the Appellate Authority for deciding the appeal of the petitioner afresh taking into consideration the ground that has been raised in this appeal and while deciding, it is expected that Appellate Authority now shall verify the objection that the petitioner has raised from the records available in the department.
17. The present Writ Petition, thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge