

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.12338 of 2009

and

MP.Nos.1 & 2 of 2009

Purani Textiles Private Ltd,
Rep. by its Managing Director,
Ranganathan
No.224/3C, S.R.Thottam
Sithanaickenpalayam (Post),
(Via) Karadivavi,
Coimbatore - 641 658. Petitioner

Vs

1. Tamil Nadu Ombudsman,
Rep. by its Electricity Ombudsman,
Chennai - 2.
2. The Chairman,
Consumer Grievance Redressal Forum,
(Superintending Engineer),
Coimbatore Electricity Distribution Circle (South),
Tamil Nadu Electricity Board,
Coimbatore - 641 012.
3. The Superintending Engineer,
Coimbatore Electricity Distribution Circle (South),
Tamil Nadu Electricity Board,
Coimbatore - 641 012. Respondents

Prayer:

Writ Petitions has been filed Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to the order of the 1st respondent dated 07.06.2007 in O.P.4 of 2007 and quash the same.

For Petitioner : Mr.K.Selvaraj
For Respondents 3 : Mr.S.K.Raameshwar,
Standing Counsel for TNEB
For Respondents 1&2 : No Appearance

O R D E R

The instant writ petition challenges the order of the Tamil Nadu Electricity Ombudsman dated 07.06.2007 in O.P.4 of 2007, which upheld the order dated 15.03.2007, by which the Superintending Engineer, Coimbatore Electricity Distribution Circle (South), Coimbatore-12, rejected the application for waiver of penalty for exceeding the maximum demand for the month of August 2006.

The facts and briefs are as under:-

2. The petitioner Purani Textiles is having a High Tension Service connection No.207. The petitioner has a sanctioned demand of 450 KVA. The petitioner states that there are frequent interruptions in power supply on 11.08.2006 between 11.30AM to 1200 Noon. The petitioner claims that though the petitioner had not used any load, the demand as shown in the meter was nearly 620.64 KW. The petitioner states that this shooting up of demand was not due to any fault of the petitioner. The Superintending Engineer, Coimbatore Electricity Distribution Circle (South), i.e., 3rd respondent imposed maximum demand charges of Rs.2,96,286/- and directed the petitioner to pay the said amount. The petitioner approached the Electricity Board for waiver of the maximum demand charges.

3. There was a recommendation to waive the levy of the highest maximum demand charges. The Consumer Grievance Redressal Forum, in a meeting was held on 25.11.2006. The recommendation of the forum was placed along with the representation of the petitioner before the appropriate authority Tamil Nadu Electricity Board, which rejected the request for waiver by passing the following order:-

"With reference to your letter cited above, we have received instructions from our Headquarters stating that your interest to waive off the penalty for exceeding the maximum demand for the month of August 2006 is not feasible of compliance."

4. The petitioner thereafter approached the Tamil Nadu Electricity Ombudsman who by an order dated 07.06.2007, rejected the contention of the petitioner by observing as under:-

"On the third issue, the respondent has alleged that the maximum demand shoot up was a result of the negligence on the part of the petitioner to maintain capacitor to the required level. The Forum in its proceedings dated 25.11.2006 has clearly observed that the EE/MRT certified the correctness of the meter and as such it is not for me to further question the correctness of the meter. The consumer shall maintain the capacitors by proper control by cutting in and

cutting off arrangement to suit the load. In this particular instance, the petitioner used supply for lighting load alongwith higher capacitors which led to over compensation resulting in rise in maximum demand. This fact has been explained to the petitioner on 25.08.2006 by EE/MRT(S), Coimbatore. In such circumstances, I am unable to hold in favour of the petitioner on this issue."

It is this order which is under challenge in the present writ petition.

5. The learned counsel for the petitioner would state that the order dated 15.03.2007 and subsequent order dated 04.04.2007 is an unreasoned order. No reasons have been given as to why the recommendation by the Consumer Grievance Redressal Forum, recommending the waiver of the maximum demand charges levied on the petitioner, was not accepted.

6. He would state that the Ombudsman on the first instance could not have give reasons for the first time. The Ombudsman ought to have directed the Electricity Board to give reasons as to why the recommendation of the Consumer Grievance Redressal Forum, recommending for waiver of maximum demand charges was not been accepted. It is trite law that any administrative order have been civil consequences has to be accompanied with reasons.

7. On the other hand, the learned counsel for the Electricity Board would contend that the reason given by the Ombudsman are correct and do not call for any interference. The decision of the Ombudsman is passed on the instructions given by the department. Be it as it may, a perusal of the order of the respondent rejecting the recommendation of waiver of maximum demand charges is completely unreasoned.

8. It is settled proposition of law that any order and more importantly an order having civil consequences must contain reasons. The reasons are very important link as to why the order was arrived. It reveals a thought process of the person giving the order. The Hon'ble Supreme Court of India, in the case of Union of India & Others Vs. E.G.Nambudiri, reported in 1991 (3) SCC 38, relevant paras have observed as under:-

"6. Entries made in the character roll and confidential record of a government servant are confidential and those do not by themselves affect any right of the government servant, but those entries assume importance and play vital role in the matter relating to confirmation, crossing of efficiency bar, promotion and retention in service. Once an adverse report is recorded, the principles of natural justice require the reporting authority

to communicate the same to the government servant to enable him to improve his work and conduct and also to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. The superior authority competent to decide the representation is required to consider the explanation offered by the government servant before taking a decision in the matter. Any adverse report which is not communicated to the government servant, or if he is denied the opportunity of making representation to the superior authority, cannot be considered against him. See: *Gurdial Singh Fijji v. State of Punjab* [(1979) 2 SCC 368 : 1979 SCC (L&S) 197 : (1979) 3 SCR 518] . In the circumstances it is necessary that the authority must consider the explanation offered by the government servant and to decide the same in a fair and just manner. The question then arises whether in considering and deciding the representation against adverse report, the authorities are duty bound to record reasons, or to communicate the same to the person concerned. Ordinarily, courts and tribunals, adjudicating rights of parties, are required to act judicially and to record reasons. Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records. Reasons are not necessary to be communicated to the government servant. If the

statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order.

7. On behalf of the respondent it was contended that principles of natural justice require the superior authority to record reasons in rejecting the government servant's representation made against the adverse remarks as the order of rejection affected the respondent's right. It is true that the old distinction between judicial act and administrative act has withered away and the principles of natural justice are now applied even to administrative orders which involve civil consequences, as held by this Court in *State of Orissa v. Dr (Miss) Binapani Dei* [(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266] . What is a civil consequence has been answered by this Court in *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405 : (1978) 2 SCR 272] . Krishna Iyer, J. speaking for the Constitution Bench observed: (SCC p. 440, para 66)

"But what is a civil consequence, let us ask ourselves, bypassing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."

The purpose of the rules of natural justice is to prevent miscarriage of justice and it is no more in doubt that the principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. Arriving at the just decision is the aim of both quasi-judicial as well as administrative enquiry, an unjust decision in an administrative enquiry may have more far-reaching effect than decision in a quasi-judicial enquiry. Now, there is no doubt that the principles of natural justice are applicable even to administrative enquiries. See: *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 : (1970) 1 SCR 457] .

8. The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of

principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for the decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. See: Regina v. Gaming Board for Great Britain, ex p. Benaim and Khaida [(1970) 2 QB 417, 431 : (1970) 2 All ER 528]. Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore desirable that reasons should be stated."

9. The Hon'ble Supreme Court of India, in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S.Gandhi, reported in 1991 (2) SCC 716, relevant paras have observed as under:-

"22. From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience (sic) of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that

all the students admitted the factum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Enquiry Officer obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Enquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need for their reiteration was obviated and so only conclusions have been stated in the reports. The omission to record reasons in the present case is neither illegal, nor is violative of the principles of natural justice. Whether the conclusions are proved or not is yet another question and would need detailed consideration. "

10. In view of the above, this Court deems fit to set aside the order passed by the Tamil Nadu Electricity Ombudsman and send the matter back to Superintending Engineer, Coimbatore Electricity Distribution Circle (South), Coimbatore, to give the reasons as to why the recommendation of forum is not being accepted.

11. The counsel for the petitioner states that the maximum demand charge have already been paid. The writ petition is allowed. The Superintending Engineer, Coimbatore Electricity Distribution Circle (South), Coimbatore, is directed to give reasons as to why the recommendation and the representation of the petitioner is rejected. Since the matter pertains to the year 2007, the Tamil Nadu Electricity Board Authority is directed to dispose of and pass the orders within a period of 6 weeks from the date of receipt of the copy of this order.

12. The writ petition is allowed. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

Pkn

To

1. Electricity Ombudsman,
Tamil Nadu Ombudsman,
Chennai - 2.

2. The Chairman,
Consumer Grievance Redressal Forum,
(Superintending Engineer),
Coimbatore Electricity Distribution Circle (South),
Tamil Nadu Electricity Board,
Coimbatore - 641 012.

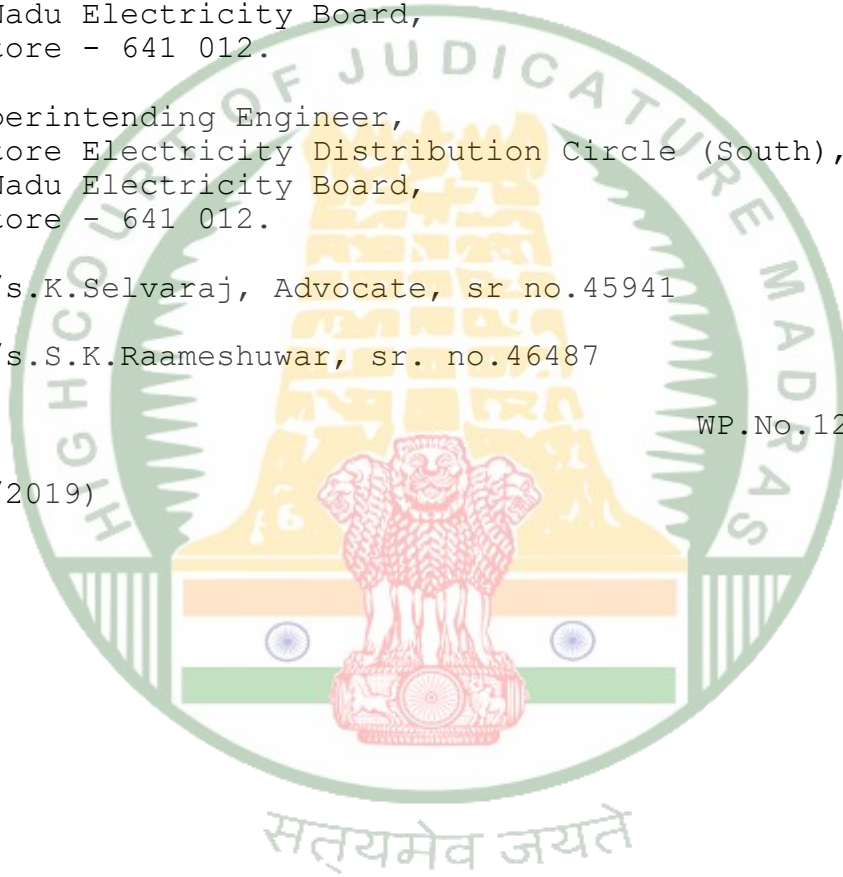
3. The Superintending Engineer,
Coimbatore Electricity Distribution Circle (South),
Tamil Nadu Electricity Board,
Coimbatore - 641 012.

+1cc to M/s.K.Selvaraj, Advocate, sr no.45941

+1cc to M/s.S.K.Raameshuwar, sr. no.46487

WP.No.12338 of 2009

BP (CO)
RMP (10/07/2019)



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