

CWP No. 5084 of 2019

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 5084 of 2019 (O&M)

Date of decision: 25th April, 2023

Sudhir Sharma

Petitioner

Versus

Commissioner of Police and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Raj Kumar Sharma, Advocate for
Mr. Lekh Raj Sharma, Advocate for the petitioner.

Mr. Samarth Sagar, Addl. AG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This writ petition in the nature of *Certiorari* is filed for setting aside of order dated 4.12.2017 and 8.10.2018 rejecting the application for grant of arms licence and dismissing the appeal respectively.

2. The brief facts are that arms licence was initially issued to the grand father of the petitioner. After his death, the arms were kept in safe custody of the police station. An application made on 4.8.2017 for issuing the arms licence was rejected. The appeal filed by the petitioner was dismissed, hence the present petition.

3. The order passed by the Licensing Authority is on a pre-printed performa. The impugned order is bereft of reasons and shows non

application of mind.

4. Law is well settled that quasi judicial orders should contain reasons and the basis for arriving at decision should be communicated to the parties. Moreover, in appeal or while under judicial scrutiny the reasoned order should stand on its legs.

5. The Supreme Court in M/ s Kranti Associates Pvt. Ltd. & another v. Sh. Masood Ahmed Khan and others, 2010(9) SCC 496, after considering the law on the issue summed up as under:

51. Summarising 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 v. 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".

6. The impugned orders are violative of principles of natural justice, consequently, the same are set aside. The matter is remitted back for deciding the application for issuance of arms licence afresh in accordance with law.

7. The petition is allowed.

8. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

25th April, 2023
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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No