

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-18776-2023

DATE OF DECISION: 25.08.2023

SWATI VASHISHT

.....PETITIONER

Vs.

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Amit Jhanji, Senior Advocate, with
Mr. Shashank Shekhar Sharma, Advocate,
for the petitioner.

Mr. Arun Beniwal, D.A.G., Haryana.

G.S.SANDHAWALIA, J. (ORAL)

1. The petitioner challenges the order dated 09.08.2023 (Annexure P-4) passed by the District Town Planner while exercising the power of the Director, Town and Country Planning, Haryana, wherein, pursuance to the show cause notice dated 26.07.2023 (Annexure P-2), the petitioner has been ordered to restore the building to its originally approved use, keeping in view the provision of Section 10 (2) of the Haryana Development and Regulations of Urban Areas Act, 1975.

2. The reply filed by the petitioner, dated 02.08.2023 (Annexure P-3) had been found to be unsatisfactory by the respondents while rejecting her claim in view of the order dated 09.08.2023 (Annexure P-4), which in fact can be termed as a non-speaking order, in view of the law laid down by the Hon'ble Supreme Court in **M/S Kranti Associate Pvt. Ltd. & Anr vs**

Masood Ahmed Khan & Ors 2010 (4) RCR (Civil) 600, whereby it was observed that a quasi judicial order should contain reason. The relevant part of the judgment reads as under:-

“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 '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 Harvard 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".

3. We have also quashed similar orders and directed reconsideration in similar circumstances in CWP-18037-2023, titled **Saloni Kaicker vs. State of Haryana and others**, decided on 21.08.2023.

4. The background of the case, as such, is that the petitioner alleges that she is running a small Dental Consultancy Clinic which would fall under the category of 'professional activity' and she was a litigant in an earlier round in CWP-20333-2006 (Annexure P-1), wherein she was arrayed as petitioner No. 22. The claim, as such was that for doctors running a clinic in 25% or less than 25% area of their residential premises, the sealing could not be done without following due procedure. The co-ordinate Bench at that point of time on 21.12.2006 allowed the petition by observing that if professional activity is being carried out by the persons and by filing the affidavit regarding usage of a small portion of the residential premises occupied by them, then in such a situation, no coercive action with regard to sealing of the residential premises shall be carried out by the authorities. That same was keeping in view the fact that it was permitted under the provisions of the Act, and it could not be treated as unauthorized or commercial. The said defence was also raised in the reply to the legal notice issued now.

5. Learned counsel appearing for the petitioner further brought to our notice, a judgment of this Court passed by the co-ordinate Bench in **Anita Kataria vs. State of Haryana and others** 2012 (1) PLR 826,

wherein keeping in view the fact that a non-nuisance professional consultancy is recognized under the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978, permitting a doctor (without nursing homes) has been recognized as one of the categories. It was held that the activity would be by an individual due to his personal skill. Apparently, the writ petition had been allowed and the writ petitioner, as such, had been allowed to carry on the business of Beauty and Skin Consultancy Services, in view of the said regulations. It is accordingly, brought to our notice that as per the Haryana Building Code, 2017, similar provisions also provide for the leverage to use the residential premises for such occupation of trade or professional activity to a limited extent of area.

6. Keeping in view that all these specific objections have not been raised in reply to the show cause notice, we permit the petitioner to file a better response to the show cause notice, wherein she can raise all the objections. Needful be done within a period of 02 weeks from today. The respondents-authorities shall then consider the said objections and then pass a speaking order, keeping in view the objections which had been raised. It is made clear that the authority shall decide the matter after giving an opportunity of personal hearing to the petitioner.

7. The writ petition is accordingly partly allowed and the impugned order, dated 09.08.2023 (Annexure P-4) is accordingly quashed.

8. Needless to say that anything stated hereinabove is only for the purposes of setting aside the impugned order, which is without any

reason and we have not commented anything about the merits of the case.

(G.S. SANDHAWALIA)
JUDGE

August 25, 2023
nitin

Whether Speaking
Whether Reportable

(HARPREET KAUR JEEWAN)
JUDGE
Yes
No