



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CWP No. 13006-1998 (O&M)
Date of Decision : 21.10.2024

Bhupinder Kumar

...Petitioner

Versus

The Secretary to Government, Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Abhishek Kaushik, Advocate for
Mr. Vijay Kumar Jindal, Advocate for the petitioner.

Mr. T.P.S. Chawla, Senior Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. Present petition has been taken up after preponing the same from 06.11.2024 to today.
2. Learned counsel for the petitioner argues that against the order of punishment, the petitioner had filed an appeal, which appeal has not only been dismissed on the ground of delay but as well as on merit but without giving any reason. Learned counsel for the petitioner submits that the order in appeal has to be a reasoned order, which fact is missing in the present case, hence, the order dated 30.04.1998 (Annexure P-22) passed in appeal is liable to be set-aside.
3. Learned counsel for the respondents, on the other hand, submits that once a detailed order has been passed imposing the punishment and it is also a conceded fact that the appeal was filed after a period of 07 days, the



prayer of the petitioner that the order passed in appeal is cryptic and non-speaking may kindly be rejected.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. It is a settled principle of law that order to be passed in appeal has to be reasoned so that all the grounds taken in appeal are decided with conscious decision. The conscious decision will only mean that for every conclusion, the reasons are given by the appellate authority.

6. In the present case, the respondents though, are declining to condone the delay of 07 days but no reason has been given by them and they have even mentioned that on merit also the said appeal is rejected but without giving any reason.

7. Further, as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.457 of 1970 titled as Mahabir Prasad Santosh Kumar vs. State of U.P and others, decided on 02.04.1970,*** the order in appeal should be speaking order so as to discuss every objection taken by the officer concerned against the order of punishment. Relevant paragraphs of the said judgment are as under:-

"5. The case discloses a disturbing state of affairs. The authorities have disclosed by their conduct a reckless disregard of the rights of the appellants. The order passed by the District Magistrate cancelling the licences was quasi-judicial; it could be made only on a consideration of the charges and the explanation given by the appellants. That necessarily implied that the District Magistrate had to give some reasons why he held the charges proved, and the explanation unacceptable. When the matter was carried in appeal, the State Government



could at least have acted with some awareness that citizens have rights which must be protected against possible arbitrary action by subordinate officials. The District Magistrate is not made the final authority in cancelling the licence. The appellants had a right to carry on their business, and as they held a licence to carry on their business they could be deprived of their right by an executive order supported by good and adequate reasons. The relevant rules granted a right of appeal to the State Government against that order, and that implied that the aggrieved party must have an opportunity to convince the State Government that the order passed by District Magistrate was erroneous. That right could be effectively exercised if reasons be recorded by the District Magistrate and supplied to the aggrieved party. If the aggrieved party is not supplied the reasons, the right to appeal is an empty formality.

6. *From the materials on the record it cannot be determined as to who considered the appeal addressed to the State Government, and what was considered by the authority exercising power on behalf of the State Government. The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law. This Court had occasion to protest against this practice in several decisions : See Madhya Pradesh Industries Ltd. v. Union of India, (1966)1 SCR 466 (per Subba Rao, J.); Bhagat Raja v. Union of India, (1967)3 SCR 302; State of Madhya Pradesh v. Narsinghdas Jankidas Mehta, C.A. No. 681 of 1966, decided on 29-4-1969(SC); State of Gujarat v. Patel Raghav Nath, C.A. No. 723 of 1966, decided on 21-4-1969 and Prag Das UmarVaishya v. Union India, C.A. No. 657 of 1965, decided on 17-8-1967 (SC). The power of the District Magistrate was quasi-judicial : exercise of the power of the State Government was subject to the supervisory power of the High*



Court under Article 227 of the Constitution and of the appellate power of this Court under Article 136 of the Constitution. The High Court and this Court would be placed under a great disadvantage if no reasons are given, and the appeal is dismissed without recording and communicating any reasons."

8. Learned counsel for the State has not been able to deny the fact that the order dated 30.04.1998 (Annexure P-22) deciding the appeal is cryptic and non-speaking, hence, the order dated 30.04.1998 (Annexure P-22) is set-aside. The appellate authority is directed to decide the appeal afresh in accordance with law. Merely that the appeal was delayed by 07 days, in case the petitioner has given good reasons for delay of those 07 days, the same be also taken into account while passing appropriate order on the appeal.

9. Petition is disposed of in above terms.

10. Pending miscellaneous application, if any, also stands disposed of.

October 21, 2024
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No