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

Date of decision: 10.12.2024

206 **CWP-10250-2019**

NEW INDIA ASSURANCE COMPANY LTD ......Petitioner

VERSUS

SUNIL KUMAR AND ANOTHER ....Respondents

208 **CWP-12874-2019 (O&M)**

NEW INDIA ASSURANCE COMPANY LTD

VERSUS

SUNIL KUMAR AND ANOTHER ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. R.C. Gupta, Advocate
for the petitioner.

Mr. Shiv Kumar, Advocate
for respondent No.1.

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VINOD S. BHARDWAJ, J. (Oral)

Raising identical dispute between same parties pertaining to different insurance policies, two separate applications were filed and awards passed. The same are now being decided by a common judgment. Facts are, however, being referred to from CWP-10250-2019.

2. Challenge in the said writ petition is to the Award dated 15.02.2018 passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh in *Application No. 89 of 2015* titled *"Sunil Kumar versus New India Assurance Company Ltd.*

3. Learned Counsel appearing on behalf of the petitioner-Insurance Company argues that the respondent-applicant had obtained a Marine Insurance policy against the declared value of consignment at Rs. 7 lakhs. The goods i.e. 604 boxes of Apples were being transported through Haryana Golden Roadways in Truck bearing Registration No. HR-55-E-0726 from Parwanoo (Himachal Pradesh) to Rai Ganj (West Bengal) vide G.R. No. 2130 dated 06.08.2013 but it turned turtle on the midnight of 9th & 10th August, 2013 near village Mohan, Police Station Hasanganj Lucknow (UP). An intimation in this regard was sent to the Insurance Company on 10.08.2013 which deputed Rakesh & Co. as their Surveyor for inspection and assessment of loss caused to the consignment. The loss in question was assessed at Rs. 2,53,816/- by the Surveyor which already stands paid. Dissatisfied with the assessment of the loss by the petitioner-Insurance Company, the respondent-applicant preferred an application under Section 22 (C) of the Legal Services Authorities Act, 1987. The respondent also claimed that as per the advice of the representative of the Surveyor, the left over and damaged goods were loaded in another truck bearing No. WB-39-A-3478 and taken to Lucknow Mandi for its sale but since no buyer was available, hence, the consignment was taken to Rai Ganj, which was at a distance of 874 kilometers from Lucknow and was sold under the care and

supervision of the representatives of the Insurance Company for a sum of Rs.90,704/-. A claim was thus made that the total loss suffered was Rs.7,32,439/-.

4. As the matter could not be amicably resolved despite conciliation, adjudication was undertaken under Section 22 –C (8) of Legal Services Authorities Act, 1987. The said application was allowed without even considering the objections raised by the petitioner-Insurance Company by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh vide Award dated 15.02.2018 which reads thus:-

> *"We have gone through the whole petition; the reply/ written statement filed by the respondent and counter reply/ written statement filed by the Petitioner. We have also heard arguments of both the parties at length and persued all the supporting documents/ Annexures placed on record by the petitioner as well as respondent. After taking into consideration of various facts of the dispute and legal provisions available on the subject matter as also keeping in view the nature of policy i.e. agreed value policy under Marine Insurance Act, 1963 we are of the considered opinion that the petitioner is genuinely entitled to be paid a sum of Rs.4,65,676/- which include consequential and unavoidable expenses incurred by the petitioner on account of additional transportation charges of Rs.93000/-, fee of Rs. 13182/- paid to surveyor and Rs.4050/- paid towards labour charges paid by the petitioner.*

Therefore we allow the petition and direct the respondent Insurance Company to pay to the petitioner an amount of Rs.4,65,676/- with interest @9% with effect from 25.12.2013 till the payment is made which is in addition to the amount of Rs.2,53,816/- already paid by the respondent. A sum of Rs.15,000/- is also directed to be paid to the petitioner by the respondent on account of compensation for harassment and further to pay Rs.5000/- towards litigation charges."

5. Aggrieved thereof, the present writ petition has been filed.

6. Learned Counsel appearing on behalf of the petitioner-Insurance Company has raised the following arguments:

i) That as against the invoice-insured value of the consignment at Rs. 7 lakhs, the Award in question comes to a sum of Rs.8,10,196/- (since Rs. 2,53,186/- was disbursed by the petitioner-Insurance Company plus the direction to pay additional compensation to the tune of Rs. 4,65,676/- and the salvage value of Rs. 90,704/-). He contends that the total awarded compensation hence far exceeds the insured value.

ii) That the Award in question is non-speaking and does not refer to any reasons as to why the assessment made by the petitioner-Insurance Company was not appropriate and as to under what compelling circumstances a higher value has to be awarded.

7) Learned Counsel appearing on behalf of the respondent-claimant, however, contends that as per the Marine Insurance Policy, the total value of the insured sum had to be paid and that it was for the said reason that the entire amount has been awarded.

8) He is, however, not in a position to rebut that there is no such discussion, which may be gathered from the Award passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh. In fact, the Award, on perusal, shows that after the narration of facts, the Permanent Lok Adalat has simply proceeded and directed payment of a sum of Rs. 4,65,676/- towards the loss alongwith the additional transport charges, fee and the Labour charges. The reasoning as to how and under what circumstances the additional amount became payable is not reflected from the Award passed by the Permanent Lok Adalat. I am thus of the opinion that the Award is non-speaking.

9) A speaking order, whether judicial or administrative, is required to give detailed explanation of the reasons behind a decision. The judicial pronouncements have laid much emphasis on the aspect of passing of a speaking order, being an essential part of transparency and accountability. Every speaking order should advert to the essential facts crucial to the adjudication of the dispute; should identify the issues involved; should record the respective arguments advanced by parties and should be followed by reasoning of the Court/authority, by adverting to legal maxims and precedents, if any, before recording its final verdict. If an order fails to advert to the arguments or does not give any reasoning for justifying how and why it has come to a definite conclusion, such an order may not satisfy the minimum parameters of a speaking order. Application of mind is reflected through the reasoning given on an issue for the conclusion drawn,

which is essential to ensure transparency, accountability and adherence to the principles of Natural Justice.

10) In the matter of ***"Siemens Engineering & Manufacturing versus Union of India and another"*** reported as ***(1976) 2 SCC 981***, the Hon'ble Supreme Court held that requirement to record reasons is a basic principle of Natural Justice and a failure to provide the same would invariable the decision. Relevant extract thereof reads as under:-

> *"6. Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned Counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N.M. Desai v. Testeels Ltd. [C. A. No. 245 of 1970, decided on December 17, 1975] . But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly*

satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated December 8, 1961 which were repeated in the subsequent representation dated June 4, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by a administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the

> *Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs Authorities and the validity of the adjudication made by the Customs Authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under customs and excise laws an independent quasi-judicial tribunal, like the Income Tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."*

11) Reiterating the need for reasoning for fairness and reducing arbitrariness in decision making, the Hon'ble Supreme Court highlighted its need and significance also in the judgment of ***"M/s Kranti Associates (P) Ltd. and another versus Masood Ahmed Khan and others"*** reported as ***(2010) 9 SCC 496.*** Relevant extract thereof reads as under:-

47. 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 lifeblood 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 731-37]

(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 Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at

562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the 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".

12. The judicial as well as administrative authorities are thus required to display the due consideration of facts and the applicable Rules/regulations in its decision making.

13. Failure to refer to the same and giving its reason fizzles the confidence in a judgment, even though the final judgment may still be the same. For a litigating party, it is essential to know what actually weighed with an authority while taking a decision and gives it an ability to test correctness of reasons in subsequent challenge in appeal. Lack of reason leaves a party clueless as to what was wrong in its claim and why the same was rejected or declined.

14. The order under challenge does not give any basis for its conclusions and thus would fail the test of a speaking order.

15. When law expects any authority to pass an order, it imbibes an inherent trust that the order is not just any order but one which answers to

the cannons of a speaking order and reflects clarity of thought and reasons & consideration of relevant facts as well as applicable law/policy.

16) The present writ petitions are accordingly allowed. The impugned Award dated 15.02.2018 is set aside. The matter is remanded to the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh to pass a fresh reasoned and a speaking order, while taking into consideration the submissions advanced by the Counsel for the parties and the evidence available on record.

17) Let the entire exercise be completed expeditiously and preferably within a period of three months of the parties appearing before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh. The parties are directed to enter appearance on **22.01.2025.**

18) Ordered accordingly.

19) All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 10, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No