

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(251)

CWP-15208-2020

Date of decision: - 13.02.2024

Sukh Sagar Avenue Welfare Association

....Petitioner

Versus

Punjab Education Development Board and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Akshay Bhan, Senior Advocate, with
Mr. Keshav Pratap Singh, Advocate,
Mr. Vivek Salathia, Advocate, and
Mr. Shaurya Khanna, Advocate
for the petitioner.

Ms. Anu Chatrath, Senior Advocate, with
Mr. Nishant Maini, Advocate
for respondent No.1 and 2.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the office order dated 18.09.2020 (Annexure P-20) passed by respondent No.2, vide which respondent No.2 has cancelled the agreement regarding the running of three schools, which was entered into between the petitioner association and respondent No.1-Board. Challenge is also to the show-cause notice dated 12.11.2018 (Annexure P-2) issued by respondent No.2 as well as inquiry report dated 12.05.2020 (Annexure P-14). A further prayer has been made for issuance of a writ in the nature of mandamus for directing the respondents to release the bills/claims

submitted by the petitioner association amounting to a sum of Rs.3.73 crores which has been due, to be paid by the respondent Board.

2. Learned senior counsel for the petitioner has submitted that the impugned order dated 18.09.2020 (Annexure P-20) deserves to be set aside solely on the ground that the same is non-speaking and does not reflect any application of mind. It is submitted that on 04.06.2020, respondent No.2 had passed an order of cancellation of the agreements of the three schools i.e. Adarsh Schools at Ransih Kalan (Moga); Adarsh School Pucca (Faridkot); and Adarsh School Miduman (Faridkot) and against the said order, the petitioner had filed a petition bearing CWP-8005-2020, which was disposed of by a Co-ordinate Bench of this Court in view of the statement made by the learned senior counsel appearing for respondents No.1 and 2 i.e. respondents No.1 and 2 in the present case to the effect that respondents No.1 and 2 are ready to withdraw the order dated 04.06.2020, subject to the liberty being granted to them to proceed further from the stage of supply of the inquiry report. It is further submitted that thereafter, the inquiry report was supplied and as has been noticed in the impugned order dated 18.09.2020, a detailed reply was filed by the petitioner on all the aspects and with respect to the allegations regarding the submission of forged bills, it was stated that even as per the inquiry report submitted by respondent No.3 all the bills were found to be bona-fide for various purchases. Specific responses were given with respect to other allegations, but the respondent No.2 without even considering the said reply and without giving any reason to reject the pleas raised in the reply, has reiterated its earlier order dated 04.06.2020.

Learned Senior counsel for the petitioner has pointed out that from page 189 to 193, the impugned order dated 18.09.2020, is the verbatim copy of the earlier order dated 04.06.2020 (Annexure P-12) and subsequent to that the order of the co-ordinate Bench of this Court in the earlier writ petition has been reproduced and thereafter, the reply filed by the present petitioner has been reproduced and subsequent part of the order shows that there is no application of mind with respect to the reply submitted. It is submitted that from the impugned order, it is not discernible as to on what basis respondent No.2 has passed the said order & cancelled the agreements in favour of the petitioner and the impugned order only records that no new facts have been stated by the petitioner.

3. In support of his arguments, learned senior counsel for the petitioner has relied upon ***a judgment dated 13.07.2023 passed in CWP-1877-2022*** titled as ***“Gagnish Singh Khurana Vs. State of Punjab and others”***. It is stated that although as per the inquiry report, the bills have been found to be bonafide, but yet, even regarding the said bills, the amount has not been released till date and it is prayed that respondent No.2 be directed to release the said amount.

4. Learned senior counsel for respondents No.1 and 2 has submitted that as far as the payment with respect to the bills which have been found to be bona-fide in the inquiry report, the payment would be made to the petitioner within a period of four weeks from the date of receipt of certified copy of the present order, in case the same has not already been paid. It is further submitted that there is sufficient material to show that the petitioner had committed violations of the agreements,

but has fairly submitted that the said aspects have not been mentioned in the impugned order and thus, in view of the arguments raised by learned senior counsel for the petitioner, a fresh speaking order would be passed by the respondent No.2 after taking into consideration the reply to the show cause notice filed by the petitioner and after considering all the aspects. It is stated that the same would be done within a period of four weeks from the date of receipt of certified copy of the present order and a prayer has been made that for the said period, the status quo as it exists today be maintained.

5. This Court has heard learned counsel for the parties and has perused the record.

6. A perusal of the impugned order dated 18.09.2020 (Annexure P-20) would show that page 189 to 193 is a verbatim copy of the earlier order dated 04.06.2020 (Annexure P-12) and thereafter, the earlier order passed by the Co-ordinate Bench of this Court has been reproduced and the subsequent part of the impugned order, after the reproduction of the order passed in the earlier writ petition, is reproduced herein below: -

“As per action taken on the orders of the Hon'ble Punjab & Haryana High Court:-

1) Orders issued vide office order dated 04.06.2020 have been withdrawn.

2) Public Private Partnership has been written to send their comments.

3) That from Public Private Partnership, reply was received vide their letter dated 31.08.2020 in which following facts have been given:-

i. Allegations regarding Submission of Forged Bills:- Enquiry Officer Sh. B.C. Gupta found that all bills are bonafide for

various purchases made.

- ii. Allegations regarding less payment to Staff - Reports of District Education Officer, Faridkot and Moga have stated that staff is satisfied with salaries paid to them.*
- ii. Deputy Commissioner, Faridkot through his report dated 16.03.2018 found that functioning of schools has been smooth and staff members have no issues with the management.*
- iv. From January, 2017 till Sept. 2019, total amount of Rs.37328614/- is outstanding against the department.*
- v. At the very outset the enquiry report given by Sh. B.C. Gupta is patently wrong as initially the enquiry was given to Sh. Surjit Singh Dhillon who conducted the enquiry for 1.5 years but Department transferred the enquiry to Sh. B.C. Gupta without any cogent reason.*

Sukh Sagar Avenue Welfare Association demanded comments on enquiry report whereas the above ii. iii. iv. is not related to the enquiry report and regarding v, it is pertinent to mention here that in continuation to the enquiry conducted by Shri Surjit Singh Dhillon, enquiry was handed over to Shri B.C. Gupta.

5. That in the reply submitted in enquiry report by Sukh Sagar Avenue Welfare Association, no new fact has come to light, hence the Chairman, Sukh Sagar Avenue Welfare Association was given opportunity of personal hearing on 10.09.2020 at 12.00 noon through video conference. From Public Private Partnership, Shri Narinder Singh Randhawa appeared for personal hearing who submitted the similar facts which are incorporated in the enquiry report and Sukh Sagar Avenue Welfare Association did not submit any new fact.

After going through the facts submitted by Sukh Sagar Avenue Welfare Association in enquiry report and personal hearing, I, Mohamad Tayab, I.A.S. Director General, School Education-cum-Member Secretary, Punjab Education Development Board reached on the decision that Sukh Sagar Avenue Welfare Association did not submit any new fact during the enquiry. So as per clauses 11, 13, 14 (iii) of the agreement of Sukh Sagar Avenue Welfare Association, the agreements signed for Adarsh Schools are being cancelled and the schools are being taken back:-

- 1) Adarsh Schools at Ransih Kalan (Moga),*

- 2) *Adarsh School Pucca (Faridkot)*
- 3) *Adarsh School Miduman (Faridkot).*

*Sd/- Mohammad Tayab, IAS,
Director General School Education-cum-Member
Secretary Punjab Education Development Board”*

A perusal of the above-order would show that after the Co-ordinate Bench of this Court had permitted the respondents to withdraw the earlier order dated 04.06.2020 and had granted liberty to proceed further after supplying of the inquiry report, the petitioner was permitted to file the reply and the reply was filed vide letter dated 31.08.2020, in which reply, with respect to allegation No.1, it had been submitted by the petitioner that the inquiry officer had found that all the bills are bonafide for various purchases made. With respect to allegation No.2, regarding less payment to staff, the stand of the petitioner was that reports of District Education Officer, Faridkot and Moga have stated that the staff is satisfied with salaries paid to them. It was further the stand of the petitioner that the Deputy Commissioner, Faridkot through his report dated 16.03.2018 had found the functioning of the schools to be smooth and that the staff members had no issues with the management. The fact that the amount of Rs.3,73,28,614/- from January, 2017 till September, 2019 was outstanding against the department was also stated. A further perusal of the impugned order would show that no observation/finding with respect to response of allegation No.1 i.e. with respect to submission of forged bills, has been given in the impugned order. It has neither been held that the response of the petitioner, to the allegation No.1 to the effect that all the bills have been found to be bonafide by the inquiry officer, is

incorrect or correct. Even with respect to the responses given by the petitioner to the other allegations, there is no definite finding and vague observations have been made regarding the same. The said order cannot be stated to be a reasoned order.

7. This Court vide ***judgment dated 13.07.2023 passed in CWP- 1877-2022*** titled as “**Gagnish Singh Khurana Vs. State of Punjab and others**” has held as under:-

“13. It is a matter of settled law that quasi judicial authorities must record reasons in support of its conclusion and insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done but also appear to have been done and that recording of reasons is indispensable in the decision making process and the same facilitates the process of judicial review by the Superior Courts and it is also necessary to give reasons for sustaining the litigants’ faith in the justice delivery system. It has further been repeatedly held that reasons so given in support of a decision must be cogent and clear and should not be “rubber stamp reasons”. Reference in this regard may be made to the judgment of the Hon’ble Supreme Court in case titled as “M/s Kranti Associates Pvt. Ltd. & Anr. Vs. Sh. Masood Ahmed Khan & Others” reported as 2010(3) SCC (Civil) 852, in which it has been held as under:-

“xxx xxx

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 quasijudicial 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".

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14. Reference may also be made to the judgment of the Hon’ble Division Bench of this Court in case titled as “Banarsi Das Cotton Mills (P) Ltd. Vs. State of Haryana and another”, reported as 1997(1) PLR 17, in which, it has been held as under:-

“xxx xxx

3. Although the impugned order/notice has been challenged on various grounds, we are of the opinion that the same is liable to be quashed on the short ground it does not contain reasons. There can be no manner of doubt that while deciding the appeal the Higher Level Screening Committee acts as a quasi judicial authority and it is duty bound to record reasons in support of its decision. The recording of reasons and communication thereof is imperative for compliance of the principles of natural justice which must inform the proceedings of every quasi judicial body and even in the absence of a statutory provision or administrative instructions requiring recording of reasons in support of the orders, the quasi judicial authority must pass speaking orders so as to stand the test of scrutiny.

4. In Testeels Ltd. v. N.M. Desai, Conciliation Officer, A.I.R. 1970 Gujarat 1 (F.B.), Full Bench of the Gujarat High Court held that the jurisdiction of the High Court under Article 226 and that of the Supreme Court under Article 136 of the Constitution of India cannot be stultified by administrative authorities by passing non-speaking orders.

5. The requirement of recording of reasons and

communication thereof by quasi judicial authorities has been emphasised in several judgments of the Supreme Court including a Constitution Bench Judgment in S.N. Mukherjee v. Union of India, A.I.R. 1990 S.C. 1984.

6. *Similar view has been expressed by a Division Bench of this Court in C.W.P. No. 10769 of 1995 (Haryana Cotton Mills P. Ltd. Tohana v. State of Haryana and Ors.), decided on 8.12.1995.*

7. *In view of the above legal position, we quash the rejection of the petitioner's appeal by the Higher Level Screening Committee and direct that Higher Level Screening Committee shall reconsider the appeal filed by the petitioner and pass a fresh order after giving opportunity of hearing to the petitioner. The High Level Screening Committee is further directed to decide the appeal afresh by passing a reasoned order within a period of one month after issuing notice to the petitioner for a specific date of hearing, on receipt of a copy of this order. The registry of this Court is directed to send a copy of this order to respondent No. 2.*

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A perusal of the above-judgment would show that in the said judgment, reliance was placed upon the judgment of the Hon'ble Supreme Court in case **M/s Kranti Associates Pvt. Ltd. & Anr. Vs. Sh. Masood Ahmed Khan & Others**” reported as 2010(3) SCC (Civil) 852, in which, the Hon'ble Supreme Court while summarizing had observed that in India the judicial trend has always been to record reasons, even in administrative decisions, if such decision affects anyone prejudicially. It was further observed that for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process". The impugned order dated 18.09.2020 is in violation of the settled principles of law and against the law laid down in the above-said judgments and thus, deserves to be set aside on the said ground alone.

8. Keeping in view the above-said facts and circumstances and the arguments raised on behalf of both the sides, the impugned order dated 18.09.2020 (Annexure P-20) is set aside with the following directions: -

- (i) Respondent No.2 is directed to reconsider the matter and pass a speaking order after taking into consideration the reply dated 31.08.2020 filed by the petitioner, within a period of four weeks from the date of receipt of certified copy of this order.
- (ii) Respondent No.2 is directed to release the amounts due to the petitioner with respect to the bills which have been found to be bona-fide by the inquiry officer vide inquiry report dated 12.05.2020 (Annexure P-14), if not already paid, within a period of four weeks from the date of receipt of certified copy of this order.
- (iii) Till the time a fresh order is passed, status quo, as it exists today, be maintained.

February 13, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes