IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5738 of 2023

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Batsha Khatoon Wife of Late Md. Israil, Resident of Village - Tupamari, Ward No. 4, Post Office - Belwa, Police Station - Kishanganj, District - Kishanganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Commissioner-cum-Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Collector, Kishanganj.
4. The District Mining Officer, Kishanganj.
5. The Bihar State Pollution Control Board through its Chairman, Parivesh Bhawan, N.S - B/2, Industrials Area, Patliputra, Patna - 800010.
6. The Chairman, Bihar State Pollution Control Board, Parivesh Bhawan, N.S - B/2, Industrials Area, Patliputra, Patna - 800010.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Ranjan

For the Respondent/s : Mr.Gyan Prakash Ojha (Ga7)

For the Mines Dept. : Mr. Naresh Dixit, Spl. P.P., Mines.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

10 08-12-2025 Heard the parties.

2. The petitioner is seeking the following reliefs:-

> *(i) For a writ of certiorari for setting aside the order dated 12.07.2022, as contained in Reference No. 1958, issued by the respondent of no. 6, whereby amount an Rs. 4,64,02,285/- was imposed as Environmental Compensation on defaulting unit of the husband of the petitioner, which order on the face of it is arbitrary, illegal, unsustainable and is liable to be quashed.*
>
> *(ii) For a writ of mandamus that the respondent no. 6 cannot approbate and reprobate, when on earlier occasion, when respondent no. 4 has applied and sought for CTE and CTO in respect of mining lease of the husband of the petitioner, respondent no. 6 has*

issued order dated 16.05.2016 addressed to respondent no. 2, that separate consent to establish and consent to operate was not required for sand mining activity, if the project proponent has been granted environmental clearance by SEIAA and in compliance of such direction respondent no. 2 and 3 passed orders permitting the petitioner to carry mining operation pursuant to grant of environmental clearance from SEIAA and therefore, respondent no. 6 is precluded from revisiting the case for the period 2015 to 2019, when the order was in force and binding and the subsequent order dated 26.02.2021 passed in O.A. No. 360 of 2015 by the National Green Tribunal would not apply in a case, where the respondent no. 6 and the department has itself taken conscious decision to waive such requirement when such request was made for such approval and the said Judgment would not govern the case of the husband of the petitioner for the period 2015 to 2019 and would operate prospectively as the husband of the petitioner has acted on such directions which respondent no. 6 was legally competent to issue.

(iii) For in the alternative a writ of mandamus that for the period of 15 months and 7 days, the mining activities was completely stopped due to cancellation of mining lease of the husband of the petitioner by the competent authority and therefore, the imposition of such liability for the period when the mining lease

was cancelled is illegal and unlawful and as such no liability could be imposed in respect of environmental damage for such period and thus the order impugned suffers from non application of mind.

(iv) For in the alternative a writ of mandamus that a liability in respect of 12 ghats could not be fastened prior to 12.09.2018, when for the first time mining operation in 12 ghats commenced with effect from 12.09.2018 after grant of environmental clearance in respect of these 12 ghats and since no mining operation was done prior to the said date there could be no question of causing environmental damage in respect of these ghats for the period anterior to 12.09.2018 and imposition of penalty for such period shows total non application of mind and thus the order suffers from arbitrariness.

(v) For in the alternative a writ of mandamus that for the period 09.01.2018 to 14.05.2018 the husband of the petitioner was not carrying out mining activity at Belwa Ghat, Baksa Sand Ghat, Baldiya Ghat and Thakurganj Ghat as the same was settled through e-reverse bidding to other settlees after cancellation of settlement of the husband of the petitioner and for the said period the liability could not fastened on the husband of the petitioner for causing environmental damage.

2. From the impugned order dated 12.07.2022 passed by the Chairman of the Bihar State Pollution Control Board, it

appears that the show-cause reply filed by the petitioner has not been considered properly and the same has been rejected by 2 ½ lines mentioned in Para '7' of the order which reads as follows:-

> *"7. Whereas, above reply was not found to be satisfactory as necessity to obtain a CTE & CTO is a statutory requirement and as such you were required to obtain CTE & CTO."*

3. The Constitution Bench of the Hon'ble Supreme Court in the case of ***S.N. Mukherjee v. Union of India, reported as (1990) 4 SCC 594***, while considering one of the questions, whether there is a general principle of law which requires an administrative authority to record the reasons for its decision, had held as under: -

> *39.* ***The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.*** *The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority*

including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underly-ing such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, ***it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.***

4. Summarizing the principles of law, the Hon'ble Supreme Court in the case of ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan, reported as (2010) 9 SCC 496***, had held as under -

"46. The position in the United States has been indicated by this Court in S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have

always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corpn. [87 L Ed 626 : 318 US 80 (1942)] and Dunlop v. Bachowski [44 L Ed 2d 377 : 421 US 560 (1974)] in support of its opinion discussed above."

"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".

5. It is a trite law that furnishing of clear, cogent and succinct reasons in support of the findings arrived at by the authority acting in quasi judicial capacity is an indispensable component of a decision making process. Recording of reasons is imperative since it not only illustrates the application of mind but also helps judicial forms to properly scrutinize such orders. Non recording of reasons illustrates arbitrariness.

6. In the present case, from the perusal of the impugned order dated 12.07.2022, that no reasons has been assigned. Therefore, it is apparent that the respondent authority has only reiterated the facts and allegations of the case and has failed to record specific reasons to arrive at a conclusion, more particularly, for its rejection / disagreement with the opinion of the Commission, which is absent in the impugned order. It is settled position of law that when a quasi - judicial body

exercises its power/discretion to adjudicate the matter, he must give reasons so that the person concerned or higher authority could know the mind of the authority, who passes the order. Giving reasons for arriving at a finding is a part of the natural justice.

7. In my opinion, when a detailed show-cause was filed by the petitioner, it was the duty of the Chairman to consider the same as consideration means discussion of the grounds raised in the show-cause reply and not merely rejecting the same by saying that it was not satisfactory.

8. In these circumstances, this application is allowed.

9. Accordingly, the impugned order dated 12.07.2022 is set aside and the matter is remitted back to the Chairman, Bihar State Pollution Control Board for fresh consideration in accordance with law.

9. It is made clear that before considering the show-cause reply of the petitioner, the petitioner shall be heard personally/through her representative and then only the authorities shall arrive at a decision and pass a reasoned order.

(Sandeep Kumar, J)

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