Omkar Lal Vs State of Madhya Pradesh

Court: MADHYA PRADESH HIGH COURT

Date of Decision: Jan. 16, 2017

Hon'ble Judges: Sujoy Paul

Bench: Single Bench

Advocate: Jai Shukla, Ajay Pal Singh, Mahendra Pateriya, Ashok Kumar Jain, D.K.Tripathi, Prashant Singh, V.D.S.Chauhan, Surendra Kumar Mishra, Pushpendra Kumar Verma, Sanjay Kumar Singh, Rajendra Prasad Gupta, Yadvendra Dwivedi, Satya Prakash Mishra, Bhanu Pratap Y

Judgement

1. These batch of petitions were analogously heard on the joint request of learned counsel for the parties. The facts are taken from

W.P.No.17678/2015. Learned counsel for the parties contended that in all connected matters, similar question of facts and law are involved.

2. The challenge in these petitions is made to the order dated 5.10.2015 whereby the appointment order of the petitioner was cancelled. The

petitioner was appointed by order dated 19.8.2013 (Annexure P/4). Thereafter, a showcause notice dated 16.6.2015 (Annexure P/7) was issued.

The petitioner filed her reply. Thereafter by impugned order, petitioner''s appointment order dated 19.8.2013 was cancelled.

3. Criticizing the said order, learned counsel for the petitioners contended that the earlier order dated 19.8.13 was issued in accordance with law.

There was no misrepresentation of fact by the petitioners. In the show-cause notice Annexure P/7, no reasons are assigned as to why the said

order was found to be illegal or unjustifiable. The show-cause notice cannot be said to be in consonance with the principles of natural justice. It is

submitted that the impugned order is passed without assigning any reason about reply of petitioners and, therefore, the said order is bad in law.

4. Prayer is opposed by Shri Pushpendra Yadav, GA for the respondents/State. He submits that there is no flaw in the decision making process

adopted by the respondents. The petitioners were put to notice and their reply were obtained. This shows that principles of natural justice were

followed by the respondents. Since there were serious irregularities in appointing/ regularizing the petitioners, the petitioners appointment orders

were rightly cancelled.

5. No other point is pressed by learned counsel for the parties.

6. I have heard learned counsel for the parties at length and perused the record.

7. Before dealing with the rival contentions, it is apposite to reproduce the averments of the showcause notice dated 16.6.2015 (Annexure P/7). It

reads as under :-

VERNACULR MATTER OMITTED

8. A plain reading of the show-cause notice shows that no allegations are mentioned against the petitioners. The entire burden was shifted on the

shoulders of the petitioners to show correctness of process of issuance of appointment/ regularization order.

9. In the opinion of this court, the very purpose of issuance of show-cause notice is to ensure that the other side comes to know about the specific

allegations levelled against her/ him. Thus, in the show-cause notice, the nature of irregularity/ illegality, must be disclosed with accuracy and

precision. In the case of Canara Bank Vs. Debasis Das, (2003) 4 SCC 557 , it was held as under:

.....Notice is the first limb in this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to

meet Time given for the purpose should be adequate so as to enable him to makehis representation. In the absence of a notice of this kind and

such reasonable opportunity, the order passed becomes wholly vitiated.....Ãƒ Â¢Ã‚â‚¬Ã‚â€‹ (Emphasis supplied)

10. Similarly in the case of Rajesh Kumar Vs. CIT, (2007) 2 SCC 181, the Apex Court opined as under: ""5 5 . Justice, as is well known, is not

only to be done but manifestly seem to be done. If the assessee is putto notice, he could show that the nature of accounts is not such which would

require appointment of special auditors. He could further show that what the assessing officer considers to be complex is in fact not so . It was also

open to him to show that the same would not be in the interest of t h e Revenue. 56. In this case itself the appellants were not made known as to

what led the Deputy Commission er to form an opinion that all relevant factors including the ones mentioned in Section 142(2-A) of the Act are

satisfied. If even one of the mwas not satisfied, no order could be passed. If the attention o f t h e Commissioner could be drawn to the fact that

the underlined purpose for appoin tment for appointment of the special auditor is not bonafide he might not have approved the same. (Emphasis

supplied) 11 . In the case of Gorkha Security Services Vs. Govt. (NCT of Delhi), (2014) 9 SCC 105, the Apex Court laid down the law that ;

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind

the serving of showcause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the

statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same.....

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(Emphasis supplied)

12. In view of aforesaid legal position, I find substance in the arguments of learned counsel for the petitioners that the show-cause notice issued by

the respondents were not in consonance with the principles of natural justice. The entire burden to prove the validity of regularization order/

appointment order was shifted on the petitioners whereas if department was not satisfied or was of the opinion that such orders were suffering from

any infirmity/ illegality, the department should have issued specific show-cause notice by mentioning the nature of irregularity/ illegality in the matter

of issuance of appointment/ regularization order. The respondents have not undertaken the said exercise and, therefore, I have no scintilla of doubt

that the said show-cause notice is against the principles of natural justice. In the impugned order dated 5.10.2015, the decision was taken on the

basis of aforesaid cryptic show-cause notice. In the impugned order, no reasons are assigned as to why defence taken by the petitioners were not

found to be trustworthy. The conclusion is drawn by holding that the reply received are not satisfactory. The reasons are held to be the heart beat

of conclusions. In absence of reasons, conclusion cannot sustain judicial scrutiny. In M/s Kranti Associates Pvt. Ltd. and another vs. Masood

Ahmed Khan and others-(2010) 9 SCC 497, the Supreme Court emphasized the need of assigning reasons in administrative, quasi judicial and

judicial proceedings. The relevant portion reads as under:

51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been torecordreasons , evenin 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 quasijudicial authority is not candid

enough about his/her decision making process then M/S Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors on 8 September, 2010 it

is impossible to know whether the person deciding is faithful to the doctrine of precedent or toprinciples of incrementalism. l. Reasons in support of

decisions must be cogent, clear and succinct. A pretence of reasons or `rubberstamp 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 Harward 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 consideredpart 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"".

13. If the impugned orders are tested on the anvil of principles of natural justice, it will be clear that neither the show-cause notice nor the final

order cancelling the appointment/ regularization, are passed by following the principles of natural justice. Apart from this, impugned order of

termination shows that it is based on various reasons which were not subject matter of showcause notice. Hence, petitioners could not get any

opportunity to putforth their defence in this regard. This is well settled that principles of natural justice are to be followed even in cases of illegal

appointments. {See : Mahendra Kumar Chourasia Vs. State of M.P.-2002(3) MPLJ-112 and Arvind Kumar Vs. State of M.P.-2002(3) MPLJ-

224.}

14. At the cost of repetition, in the opinion of this court, the show-cause notices are cryptic in nature and do not contain the reasons, on the

strength of which, the respondents intended to cancel the appointment/ regularization order. The final order is also pregnant with the similar

infirmity. Resultantly, the impugned orders of cancellation of appointment/ regularization in all these petitions are set aside. Liberty is reserved to the

respondents to issue fresh show-cause notice and proceed against the petitioners in accordance with law by taking into account the observations

made hereinabove. It is made clear that this court has not expressed any opinion on merits of the case.

15. All the aforesaid petitions are allowed. No cost.