

Rousanara Khatun (Bibi) Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Sept. 2, 2010

Acts Referred: Constitution of India, 1950 " Article 19(1), 21

Citation: (2011) 1 CHN 287

Hon'ble Judges: Pratap Kumar Ray, J; Harish Tandon, J

Bench: Division Bench

Advocate: Narayan Ch. Mandal, Anita Khattri and Sunanda Sil, for the Appellant; Sk. Oli Mohammad, B. Mitra for State and Labanyamoy Sarkar and Sandip Ghosh for Private Respondent, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.

Heard the learned Advocates appearing for the parties.

2. Assailing the order dated 10th March, 2010 passed in W.P.23823(W) of 2009 by the learned Trial Judge, this appeal has been filed. In

connection with the appeal, an application for stay, being CAN. 6619 of 2010, has been moved.

3. Considering the nature of the impugned order under appeal, we are of the view that the appeal and the application for stay both could be

disposed of.

4. Since all parties are appearing, service of notice of appeal and other formalities stand dispensed with.

5. The appeal is taken up as on day's list for final disposal.

The impugned order reads such.

10.3.2010 W.P. 23823 (W)of 2009

This application does not merit any order as the materials are not sufficient to warrant an order thereon. Accordingly the same is dismissed.

6. On a bare reading of the impugned order, it appears that no reason has been assigned as to the particulars of the materials which lead to the

conclusion ""not sufficient"" made by the learned Trial Judge. The impugned order accordingly is attracted by the principle of speaking order which

mandates that every order should be with reasons. This principle has now a deep root ground in the legal field.

7. The Supreme Court has settled the legal position. Those are discussed hereinbelow.

8. It is the basic principle of law that every order passed by any administrative body or any quasi-judicial body and/or even by the judicial body

must disclose the reason of the order so that the person concerned who is affected thereby may approach the higher forum and/or higher Court

assailing the decision thereof. In the case Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan

Varshney and Others, the Apex Court held that ""reason must be given by the appellate or revisional authority even when affirming the impugned

decision"". Reliance was placed in that case, the case of Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao, ; Madhya Pradesh

Industries Ltd. Vs. Union of India and Others (UOI), and The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India

(UOI) and Another, . In that case the Court explained and discussed the contra decision passed in the case S.N. Mukherjee v. Union of India,

reported in 1990 (4) SCC 94 by explaining the said decision that in case of affirmation, no reason separately required to be given as held in S. N.

Mukherjee (supra) should be read as an observation meaning thereby that order of affirmation need not contain any elaborate reasoning as

contained in original order, but it cannot be understood to mean that even brief reason need not be given in order of affirmance. The Court further

explained in that case the earlier case of State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, , since in the case Prabhu Dayal

Grover (supra), it was observed that for affirmative order there was no necessity of giving any reason to this effect that the observation of the

Prabhu Dayal Grover (supra) should be read as that the Appellate Authority should disclose briefly application of mind as without any reason it

cannot be satisfied. It has been further held at least that brief reason should be given so that one can know that the Appellate Authority has applied

his mind.

9. Right to information and right to be informed about a reason of any decision is within the domain of Article 19(1) read with Article 21 of the

Constitution of India in terms of the views expressed by the Apex Court in the case Ravi S. Naik and Sanjay Bandekar Vs. Union of India and

others, It has been held in the case Bhagwan Swarup Vs. The State of U.P., that administration is under a general duty to act fairly and fairness

founded on reason is the essence of right and equality. Lord Denning MR in the case Breen v. Amalgamated Engineering Union Limited, reported

in 1971 (2) QB 175, even held ""it is one of the fundamental of good administration to assign a reason in the decision."" In the M.P. Industries

Limited (supra) case, Justice Subbarao held in considering the principle of reasoned decision that justice not only should be done but it should be

felt to have been done, where reason is a must. Absence of any reason is nothing but non-application of mind is the views expressed in the case

Shanti Prasad Agarwalla and others Vs. Union of India and others, . In the case Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I

Circle and Others, wherein in para 17 the Court held ""reason is heart bit of every conclusion. It introduces clarity and without the same it becomes

lifeless"". In the case State of West Bengal and Another Vs. Alpana Roy and Others, , on considering the cases, namely, Breen (supra),

Amalgamated Engineering Union Limited (supra) and Alexander Machinery (Dudly) Ltd. v. Crabtree, reported in 1974 ICR 120 (NIRC), in para

8 the Court held ""reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the inscrutable face

of sphinx, it can, by its silence render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial

review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reason at least sufficient to

indicate an application of mind in the matter before the Court"". In Alexander Machinery (Dudly) Ltd. (supra) the Court held ""failure to give reasons

amounts to denial of justice. Reasons are live links between the minds of the decision taker to the controversy in question and the decision or

conclusion arrived at"". The same view reiterated in the case Jagtamba Devi Vs. Hem Ram and Others, wherein in para 10, the decision of Breen

(supra) and Alexander Machinery (Dudly) Ltd. (supra) was quoted. Non-speaking order violates the principle of natural justice is the view

expressed by the Constitution Bench in the case S.N. Mukherjee Vs. Union of India, , by holding that quasi-judicial and administrative body if fails

to pass any speaking order it breaches the principle of natural justice. Speaking order principle is applicable to a judicial action also as held in Smt.

Swaran Lata Ghosh Vs. H.K. Banerjee and Others,

10. Considering those Judgments, the impugned order is not legally sustainable and it stands set aside and quashed.

11. The writ petition to be heard de novo and a reasoned decision should be passed by the learned Court below.

12. The appeal is accordingly allowed.

13. It is made clear that we have not gone into the merits of the case.

14. All points are kept open for decision.

15. The stay application and appeal, both are accordingly disposed of.

Harish Tandon, J.

I agree.