(2009) 07 CAL CK 0033

Calcutta High Court

Case No: W.P.L.R.T. No. 55 of 2009

Noor Mahammad Mallick		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: July 10, 2009

Acts Referred:

- Constitution of India, 1950 - Article 19(1), 21

Hon'ble Judges: Tapas Kumar Giri, J; Pratap Kumar Ray, J

Bench: Division Bench

Advocate: S.P. Purakait, for the Appellant; Abdulla Rahamani for Respondent Nos. 5 and 8, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.
Affidavit-in-opposition and reply as filed be kept with the record.

2. Assailing the order dated 4th December, 2008 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 2467 of 2008 (LRTT), this writ application has been filed. The impugned order reads such:

This application is thoroughly misconceived and therefore, stands dismissed.

The petitioners are directed to submit their petition papers before the appropriate forum.

3. It is the case of the writ petitioner that his prayer for correction of the record of rights on the basis of the title deed since stood rejected, he approached the Tribunal earlier and thereafter the Land Tribunal directed for de-novo hearing and ultimately in the suo moto case it was rejected. Challenging said order, the original application was filed before the Tribunal. Be that as it may, it appears from the impugned order that no reason assigned by the learned Tribunal below as to why the application was

misconceived.

4. It is now a settled legal proposition of law that every decision of administrative, quasi judicial authority and/or the judicial body must be with reason so that the person concerned who would be aggrieved by such decision may take appropriate steps by fling application to the higher authority or higher forum as the case may be. This principle is known as a "speaking order doctrine".

5. Having regard to the order of the learned Tribunal, we are of the view that it is not legally sustainable due to breach of 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, 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, Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, , the 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 Divisional Forest Officer, Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao, Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), and Seamen Engineering 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 vs. Union of India, reported in 1990(4) SCC 94 by explaining the said decision that in case of affirmation, no reason separately is required to be given as held in S. N. Mukherjee (supra) but it 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 views expressed in 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 by explaining to this extent that the observation of the Prabhu Dayal Grover (supra) should be read as that the Appellate Authority should disclose briefly application of mind. It has been further held in that case that atleast brief reason should be given, so that one can know that the Appellate Authority has applied his mind.

6. 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 The Manager, Government Branch Press and Another Vs. D.B. Belliappa, 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 vs. 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 view 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 vs. Amalgamated Engineering Union Limited (supra) and Alexander Machinery (Dudly) Ltd. vs. 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 un-securable 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 to 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,

7. Having regard to the settled legal proposition of law as discussed above, this impugned order is attracted by the "doctrine of speaking order" as no reason has been assigned by the learned Tribunal below as to why the application was misconceived.

Considering that, impugned order is set aside and quashed. Writ application is allowed. Learned Tribunal below is directed to dispose of the application by passing a reasoned order. It is made clear that we have not gone into the merits of the case; all points are kept open for adjudication by the learned Tribunal.

Tapas Kumar Giri, J.

8. I agree.