
(1981) 06 CAL CK 0028
In the Calcutta High Court
Case No : Civil Rule No. 12374 (W) of 1980

Bhakta Prosad Paul

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-06-1981

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Land Reforms Act, 1955 — Section 54

Citation : AIR 1982 Cal 254 : 85 CWN 959

Hon'ble Judges : Manas Nath Roy, J

Bench : Single Bench

Advocate : Archana Sen Gupta and Amit Prokash Lahiri, for the Appellant; B.C. Dutt and Satyanarayan Jas for Respondent Nos. 4 and 5, for the Respondent

Judgement

Manas Nath Roy, J.—The Rule, in which the exceptions regarding the maintainability have been taken and the particulars whereof are mentioned hereinafter, was obtained on 18th Nov., 1980, against order dated 13th March, 1978, made by the Bhagchas Officer, Monteswar, Burdwan, in Bhagchas Case No. 40 of 1976, as affirmed in M. P. Case No, 154 of 1978 on 10th July 1980. The impugned orders are in Annexures "E" and "H" to the petition of motion.

2. It was contended by the petitioner, on a reference to the impugned appellate order, that the same was bad, irregular, void, illegal and unauthorised, as firstly, the same was not a duly reasoned order or a speaking order, secondly the reference to Bhagchas Case No. 46 of 1976 in the order itself, which should have been Bhagchas Case No. 40 of 1976, proved and established non application of mind and thirdly, even though such point was not taken in explicit language, both the determinations as impeached, were perverse, as the facts and evidence as lead or tendered, were not duly considered. It has been stated that the lands in question belonged to one Khudiram Mondal and on his death, his son Sri Sailendra Nath Mondal, Sm. Bhagabati Mondal, the second wife of the deceased and Sm. Minati Rani Mondal, the daughter, inherited those properties. It has also

been stated that Sm. Bhagabati Mondal and Sm. Minati Rani Mondal, settled the lands in question as Bargadar with the petitioner, after such inheritance,

3. It was the case of the petitioner that thereafter, Respondents Nos. 4 and 5, for whom Mr. B. C. putt was appearing, filed an application for eviction of the petitioner on the grounds as mentioned in Section 17(1)(d) of the West Bengal Land Reforms Act. 1955 (hereinafter referred to as the said Act). This application, as mentioned above, was numbered as Bhagchas Case No. 40 of 1976. Such application, even after contest by the petitioner, was allowed, wherefrom the concerned appeal was taken, which again was dismissed in the manner as indicated above.

4. The main grievance of the petitioner have been indicated hereinbefore. The Respondents Nos. 4 and 5, by their affidavit-in-opposition dated 17th December 1980, apart from denying the material allegations and facts, claimed that the determinations as made by the Bhagchas Officer, were due, proper and appropriate, on the basis of the pleadings and records or evidence as available before him and since the terms of the appellate order would establish that the determinations as made in the manner as indicated hereinbefore, were appropriate, so there was also no justification in the contentions of the petitioner that the appellate order was bald, bare or without any appropriate particulars or reasons. It was also stated that the reference to Case No. 46 of 1976, instead of Case No. 40 of 1976, was made inadvertently and in any event, such reference, has not created any prejudice. so far the petitioner was concerned and such mistake, which was an accidental one, was appropriately corrected, by an order dt. 3rd Oct. 1980. It was claimed that in the facts of the case, if the Rule is not disposed of early, the interim order as made, should be vacated. In fact, when on 21st April, 1981, the case appeared in the list, Mr. Jas prayed, that let the affidavit-in-opposition as filed, be treated as an application for vacating the interim order. Such prayer was allowed and it was directed that exceptions by the petitioner, if any, to the said application for vacating the interim order, be taken within two weeks and reply thereto by a week thereafter. The exceptions and the reply have been filed and they are dated 4th May, 1981 and 7th May. 1981 respectively. Mrs. Sen Gupta claimed that instead of determining the issues regarding the maintainability of the application, on the grounds as mentioned by the answering Respondents at this interlocutory stage, where and when no final order is required or intended to be made, this Court can. without deciding the point, should direct the matter to go back before the learned Tribunal, for appropriate determination in accordance with law and that too, after giving due reasons, for such determinations.

5. The above submissions of Mrs. Sen Gupta and those of her contentions, that the learned Tribunal, who was required to pass a reasoned order or to make a speaking order, was contested by Mr. Dutta, who claimed, that in the facts and circumstances of the case and more particularly when, on a reference to the order as made by the learned Tribunal, it would appear that such order was

made or passed, on consideration of the initial order and more particularly when the reasons given in the initial order, are the basis of the final and ultimate order by the learned Tribunal so no interference is required or should be made or necessary, as, if the two orders are read together, they would give a complete answer to the submissions of Mrs. Sen Gupta and more particularly, that a reasoned or a speaking order has been passed.

6. Mr. Dutt also claimed that such reasoned or speaking order, would be necessary or required when there would be a statutory appeal, but not in cases, where a writ proceeding has been initiated. He contended that writ proceeding, not being statutory appeals and in such proceeding, this Court having no jurisdiction or authority to interfere with the findings of facts or to assess or reappraise evidence as led, unless perversity is proved or established, the submissions as put forward by Mrs. Sen Gupta, could not be considered or would be available in such a proceeding. It was in fact, claimed by Mr. Dutt that perversity in this case, has neither been pleaded nor established and as such the same should not be a ground for consideration by this Court.

7. In support of his submissions as aforesaid Mr. Dutt firstly, referred to the determinations in the case of Uttam Bala v. M. N, Mathur, AIR 1972 Goa 41, This was a case under the Defence of India Rules 1952 and more particularly under Part XII-A, comprised of the Gold Control Rules. In that case, it has been observed that where order of the Government in revision, indicates that the detailed reasons given in the order of the Collector and Administrator, were considered and adopted by the Government, there was no need for the Secretary to the Government, to pass the order to repeat those reasons in his own order. The order of the Government, therefore, cannot be quashed on the ground that it was a non speaking order. Then, reference was made to the determinations in the case of Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, , for the observations that although it may be necessary for the disciplinary authority to record its provisions and conclusions in the notice calling upon the delinquent officer to show cause why the proposed punishment should not be imposed upon him, if it differs from the findings arrived at by the Enquiry Officer with regard to the charge, it is not obligatory to do so in case the delinquent officer concurs with the findings of the enquiry officer. Mr. Dutt thereafter referred to the case of Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), . In this case, it has been observed that the order of the Central Government, in the facts of that case, was not bad, since they agreed with the reasons given in the orders of the State Government and under the relevant Rules, they were not bound to give fuller reasons in the concerned order. It was then pointed out by Mr. Dutt, on a reference to the determinations in the case of Som Datt Datta Vs. Union of India (UOI) and Others, , which was a case under the provisions of the Army Act. 1950, that there is no express obligation imposed by Section 164 or by Section 167 of the Army Act, on the confirming authority or upon the Central Government, to give reasons in support of its decision to confirm the proceeding of the Court Martial. It has also been observed in that case, that apart from any

requirement imposed by the statute or statutory Rules, either expressly or by necessary implication, it cannot be said that there is any general principle or any rule of natural justice that a statutory Tribunal should always and in every case give reasons in support of its decision. It was thus observed further that such orders cannot, therefore, be held to be illegal for not giving any reasons for confirming the orders of the Court Martial.

8. The above argument on natural justice and the case, was made and cited, as Mrs. Sen Gupta contended that when admittedly the learned Tribunal changed the number of the case from B. C. Case No. 46 of 1976 to B. C. Case No. 40 of 1976 after a lapse of time and without any opportunity to the petitioner of being heard, there was violation of such principles. On this point, on consideration of the arguments and the pleadings, I do not think that the petitioner has a substantial case, as admittedly he had no prejudice or difficulty in appreciating the effect of the appellate order on that basis or to challenge the appellate order, for that reason. The quoting of a wrong case number, may happen or occur for reasons more than one, but, that would not ipso facto establish non-application of mind as claimed by Mrs. Sen Gupta. The learned Tribunal, in my view, had jurisdiction and authority to correct such accidental error or mistake and since it has duly made such corrections, it can but be held that the learned Tribunal duly acted within its power, competence and jurisdiction. So, the submissions of Mrs. Sen Gupta on this aspect, should also fail.

9. Mrs. Sen Gupta claimed that the cases as cited by Mr. Dutta and the particulars whereof are mentioned herein before, are distinguishable on facts. It was specifically claimed by her, on a reference to the grounds of appeal in M. P. Case No. 154 of 1978 and the appellate order as impeached, that the learned Tribunal has not duly determined the issues involved, on proper or due reasons being given. It was claimed by her that the initial authority also was in errors in deciding the lis or the points as raised and pleaded duly. As such, she claimed that the point regarding perversity, even if not taken specifically, this Court would not be powerless to consider whether the points as duly raised have been appropriately decided on good and cogent reasons and if the answer is not satisfactory, then that would give rise to or would be a case of perversity, which this Court, in a proceeding under Article 226 would be justified and authorised to investigate. There is no doubt that in a writ proceeding High Court would be justified to interfere and investigate in cases of perversity, when the findings arrived at, are obstinate Iyer wilfully or unreasonably or blindly or unaccountably wrong. In fact, it was the submissions of Mrs. Sen Gupta that since the exceptions as duly taken or raised at appropriate stages, have not been properly dealt with or decided, on reasons or such reasons are not available from the records viz., the orders as impeached, there was admittedly a case of perversity, which this Court can investigate, more so when in a writ proceeding. High Court, as a superior authority, has such right over inferior Tribunals. Mrs. Sen Gupta further claimed that the High Court, as such superior authority, has every jurisdiction to see, scan and scrutinise the reasonings given by the inferior

Tribunals, in a case like this and as such, the learned Tribunal was required to record its reasons duly or should have passed a speaking order, so that reading the appellate order, it could form the opinion or get an idea about the basis or background of the order, as made. It was further claimed by Mrs. Sen Gupta that since the orders as made, have determined the rights of the petitioner. so the authorities making them, were quasi-judicial authorities and as such also, they were required to pass speaking orders. She claimed that the order by the initial authority was speaking order no doubt, but since the learned Tribunal, has not decided all the exceptions as taken by a speaking order, such determination was perverse.

10. The submissions as referred to above, do get support from the determinations in the case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , where it has been observed that opportunity to a party interested in the dispute to present his case on question of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. Recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice whim or fancy reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal. The submissions of Mrs. Sen Gupta, do also get further support from the determinations in the case of Travancore Rayon Ltd. Vs. Union of India (UOI), . In that case, it has been observed that when judicial power is exercised by an authority normally performing executive or administrative functions, the Supreme Court insists upon disclosure or reasons in support of the order on two grounds, one, that the party aggrieved in a proceeding before the High Court or the Supreme Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous, the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

11. It must also be noted that apart from the decisions as mentioned hereinbefore, specific reference was made by Mr. Dutt to the determinations in the case of State of Madras Vs. A.R. Srinivasan, , which was also a case on disciplinary proceedings and where, the Supreme Court has observed that in dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, it is to be remembered that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the Government and which is made available to the delinquent officer also, it is unreasonable to suggest that the State Government must record

its reasons as to why it accepts the findings of the Tribunal. It is conceivable that when the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons as to why it differs from the conclusions of the Tribunal, though even in such a case it is not necessary that the reasons should be detailed or elaborate. This case was also sought to be distinguished by Mrs. Sen Gupta on the grounds as mentioned above, Mr. Dutt also made further reference to the determinations in the case of the State of Assam and Another Vs. Bimal Kumar Pandit, wherein, the effect of absence of statements, if the findings of the enquiry officer were accepted and what was contemplated by reasonable opportunity under Article 311(2), were considered and it has been observed that it is no doubt desirable that the dismissing authority should indicate in the second notice its concurrence with the conclusions of the enquiry officer before it issues the notice under Article 311(2) of the Constitution, But the failure to so state expressly in the notice does not necessarily justify the conclusion that the notice given in that behalf does not afford a reasonable opportunity to the delinquent officer under Article 311(2) and amounts to a contravention of Article 311(2) If the dismissing authority differs from the findings either wholly or partially, recorded in the enquiry report it is essential that the provisional conclusions reached by the dismissing authority must be stated in the notice in order to give the delinquent officer a reasonable opportunity to show cause under Article 311(2). But where the dismissing authority purported to proceed to issue the notice after accepting the enquiry report in its entirety (as in the instant case) and a copy of the enquiry report was also enclosed along with the notice, it must have been obvious to the delinquent officer that this findings recorded against him by the enquiring officer had been accented, and so it would not be reasonable to accept the view that the civil servant concerned had no reasonable opportunity as required by Article 311(2). From the fact that the enquiry report had suggested the punishment of withholding of three increments while in the show cause notice the action proposed was removal from service, it cannot be inferred that the dismissing authority did not accept the findings recorded by the enquiring officer in favour of the delinquent officer, apart from holding that it is now well settled that a public officer against whom disciplinary proceedings are intended to be taken is entitled to have two opportunities before disciplinary action is finally taken against him. An enquiry must be conducted according to the rules prescribed in that behalf and consistently with the requirements of natural justice. At this enquiry, the public officer concerned would be entitled to test the evidence adduced against him by cross-examination, where necessary, and to lead his own evidence. In other words, at this first stage of the proceedings he is entitled to have an opportunity to defend himself. When the enquiry is over and the enquiring officer submits his report, the dismissing authority has to consider the report and decide whether it agrees with the conclusions of the report or not. If the findings in the report are against the public officer and the dismissing authority agrees with the said finding, a stage is reached for giving another

opportunity to the public officer to show why disciplinary action should not be taken against him. In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. The second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. It should also be noted that in the case of Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others, , it has been observed that while the rules of natural justice would apply to administrative proceedings, it is not necessary that the administrative orders should be speaking orders unless the statute specifically enjoins such a requirement. But it is durable that such orders should contain reasons when they decide matters affecting rights of parties.

12. Thus, on the basis of the decisions as cited at the Bar and as above and when one thing is certain, that the High Court has power of interference in cases of perversity, so it will also have the jurisdiction to see, if the exceptions as taken, have been appropriately dealt with and decided. For that, and to ensure proper justice, thus, the High Court, in appropriate cases, will have jurisdiction to demand a speaking order from the lower Tribunal, not only for the purpose of finding out, whether the exceptions as taken, have been duly decided, but also for the purpose of testing the validity of the findings arrived at, on the available materials and evidence. Under the determinations of the Supreme Court, ordinarily and where perversity is not in issue, a learned Tribunal, on appeal, may not be required to record reasons extensively, where such appellate order is made on the basis of or on consideration of and in the light of the findings of or by the initial authority, as, in terms of the submissions of Mr. Dutt, the theory of merger would apply. But, the position would be different in a case like this or where there has been an allegation of perversity or there has at least been a claim to that effect, or which would be required to be decided by the High Court. In such view of the matter, the determinations, as referred to by Mr. Dutt are distinguishable. So, on the basis of the claims as made by him, on the aspect under consideration, when a Rule has been issued, on prima facie satisfaction, the same, in my view can neither be discharged nor the interim order as made in aid of the same, can or should be dissolved at the interlocutory stage, the more so when, the orders as made, have also affected the right of the petitioner or affect the right of the parties.

13. As such, the prayers of Mr. Dutt at this stage, are refused and I further have it on record, that by this determination, I have not made and in fact I have not intended to make any final determination of the issues as involved in the case and they are left to be decided or considered at the relevant stage, on appropriate or proper materials and submissions.