

(1993) 06 CAL CK 0008
In the Calcutta High Court
Case No : F.M.A.T. No. 2272 of 1992

Chief Executive Officer, Nadia District Central Co-Operative
Bank Ltd.

APPELLANT

Vs

Deba Prasad Banerjee

RESPONDENT

Date of Decision : 10-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 409, 418
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 22(2)

Citation : (1993) 1 ILR (Cal) 479

Hon'ble Judges : Bhagabati Prasad Banerjee, J; Ashoke Kumar Chakraborty, J

Bench : Division Bench

Advocate : Tarun Kumar Ray, for the Appellant; Kashi Kanta Maitra and A.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J.—This appeal under Clause 15 of the Letters Patent is against the order dated July 9, 1992, passed by Ruma Pal J. in C.O. No. 4842 (W) of 1989.

2. The subject-matter of challenge in the writ application was ordeed on May 2, 1989, passed by the State Government u/s 32(2) of the West Bengal Co-operative Societies Act, 1983, rescinding the resolution passed by the Board of Directors of the Nadia District Central Co-operative Bank Ltd. passed on June 27, 1988, whereby the said Co-operative Bank resolved that the said Bank would not proceed any further regarding all cases pending in different law Courts in the matter of writ Petitioner, Deba Prasad Banerjee and that all the charges and allegations and poceedings were resolved and the charges allegations and proceedings against him were dropped and withdrawn considering the same to be baseless and without foundation. The suspension order was also revoked and withdrawn. By the said resolution the writ Petitioner was reinstated in service

after revoking the order of suspension. The learned trial Judge on consideration of the entire matter allowed the writ petition and quashed the decision and the resolution of the State Government dated January 27, 1992, and the second show-cause notice. The fact of this case in short is this that the writ Petitioner was an employee of the said Bank and was employed since 1961 and at the relevant time he was the Branch Manager of Santipur Branch of the said Bank. A show-cause notice was issued to the writ Petitioner alleging negligence of duty, indiscipline, insubordination etc. On March 19, 1984, the writ Petitioner was placed under suspension. Six months thereafter the Executive Officer of the Bank lodged an F.I.R. on the basis of which a Police case was started on the same allegations. Ultimately, the Police authority after investigation submitted report stating that there was no case against the writ Petitioner for framing charges under Sections 409 and 418, Indian Penal Code. The Sub-divisional Judicial Magistrate was not satisfied with the final report of the Police authorities and ordered for fresh investigation. The said investigation resulted in a final report in favour of the writ Petitioner. The Police authorities recommended for discharge of the writ Petitioner in the said case. In the meantime, the Petitioner challenged the notice of suspension and other consequential order made by the Departmental Officer initiating departmental proceeding against the writ Petitioner by an application under Article 226 of the Constitution of India before this Court, and this Court in or about November 1984 passed an interim order to the effect that the Appellants Bank authorities could proceed with departmental proceeding, but no final order would be communicated without the leave of the Court to the writ Petitioner. Thereafter for the purpose of appeal it is not necessary to go into the fact in detail inasmuch as the Board of Directors of the Appellant Bank passed a resolution on June 27, 1988. The said resolution was as follows:

Considering the acts of Vice-Chairman (ref. proceedings of the Board meetings dt. 16.1.1988, and 3.2.88). The Final Reports submitted twice by D.D.B. Police Books of Accounts, Records, Audit Report etc. demands of the Employees' Union, the sum total interest of the Bank, this meeting resolved that the Bank will not proceed further regarding all cases pending in different Law Courts in the matter of Sri. Deba Prasad Banerjee now under suspension and that the Inquiry Authority or Authorities or any other authority of similar nature so constituted before, for the purpose of enquiry into the charges and allegations, proceedings etc. against Sri Banerjee are dissolved and terminated and all charges, allegations or proceedings as alleged against him are dropped and withdrawn considering them as baseless and without foundation. Suspension order is hereby revoked and withdrawn. Sri Banerjee is now entitled to join his duty at present in the Head Office of the Bank and to report accordingly. Further it is resolved that Sri. Banerjee will be entitled to get all privileges including financial dues, arrears, and current in accordance with the provisions of the Act and Rules, by laws concerned according to his service status.

C.E.O. will act according to the contents of this resolution.

3. In exercise of the power conferred u/s 32(2) of the West Bengal Co-operative Societies Act, 1983, the State Government passed the following order on April 10, 1989:

Whereas the Board of Directors of Nadia District Central Co-operative Bank Ltd. (hereinafter referred to as the said Bank) in the meeting held on 27.6.88 adopted a resolution on agenda No. 4 to withdraw all charges, allegations and proceedings and to drop all departmental proceedings drawn up by the Chief Executive Officer of the said Bank against Sri. Deba Prasad Banerjee, Officer Gr. IIA of the said Bank for his gross misconduct and wilful delinquent activities and to approve his reinstatement without taking leave of the Hon'ble High Court before which the matter was sub judice. And whereas the Governor is satisfied that aforesaid resolution shall adversely affected the interest of the said Bank and shall be clearly violative of the Hon'ble Court's order. Now, therefore, in exercise of the power conferred by Sub-section (2) of Section 32 of the Bengal Co-operative Societies Act, 1983, the Governor is hereby pleased, in the interest of the afoesaid Bank, to rescind the resolution of the Board under agenda No. 4 adopted on 27.6.88 by which the said Sri. Deba Prasad Banerjee was allowed to join his duty at the head office of the Bank and all disciplinary charges directed against him dropped and withdrawn.

This order of the State Government dated April 10, 1989, was the subject-matter of challenge in an application filed by the writ Petitioner which was allowed by the learned trial Judge. The learned trial Judge on consideration of the scope and power u/s 32(2) of the said Act held that it is well-settled that even when there is no specific provision in the statute or the rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of the individual. The duty to give reasonable opportunity to be heard should be implied from the nature of the function to be performed by the authority which had power to take some damaging action and held that as no opportunity of being heard was given to the Board before the impugned order was passed by the State Government the said order was a nullity. It was further held by the learned trial Judge that satisfaction of the Government in issuing the order was based on two reasons, namely, the resolution would adversely affect the Bank and, secondly, the resolution was in violation of the High Court's order mentioned above. So far as the ground of violation of the order the Court, of the learned trial Judge has held that the second ground could not be sustained inasmuch as by the order of the Court, the Appellants were restrained from passing any final order in the disciplinary proceeding, this order could not be entertained as preventing the Bank from dropping disciplinary proceeding altogether against the writ Petitioner. The interim order was passed by this Court as directive measure intended to protect the interest of the writ Petitioner and cannot be construed to his disadvantage. Second reason for passing the order by the State Government u/s 32(2) of the said Act was clearly not tenable.

4. Mr. Tarun Kumar Roy, learned Advocate appearing on behalf of the Appellants,

submitted that there was no scope for giving an opportunity in view of the provisions of Section 32(2) of the said Act and further submitted that reopening of disciplinary proceeding has no civil consequences. It was further submitted that in the facts and circumstances of the case the State Government acted within its jurisdiction and acted strictly in accordance with law in passing the order u/s 32(2) of the said Act as the resolution that was passed by the Board dropping the disciplinary proceeding was likely to affect the interest of the Co-operative Societies. Mr. Roy had referred to the decision of the Supreme Court in the case of Cantonment Board v. Taramani Devi 1992 (2) S.C.C. 501 in support of his contention that if it was the intention of the Legislature to give an opportunity of being heard, the same has to be given. Otherwise, principle of natural justice could not be imported in the facts and circumstances of the case. In this connection reliance was also placed to the provision of Section 32(2) of the said Act to indicate that the case covered u/s 32(2) of the said Act specifically contemplates giving of hearing. Mr. Roy further submitted that there is no scope for giving opportunity either to the Board or to the writ Petitioner before the State Government takes any decision inasmuch as the Board is conferred upon high authorities by the State Government and that when Board has been conferred upon high authorities it is a safeguard against possible arbitrary action. It was further submitted by Mr. Roy that if one of the grounds is valid as has been found by the learned trial Judge, in that event learned trial Judge should have upheld the decision of the State Government u/s 32(2) of the said Act.

5. On behalf of the Respondents it was submitted that the order was passed by the State Government u/s 32(2) of the said Act without recording the reason as mandatorily required to be done u/s 32(2) of the said Act. Further, the State Government cannot pass any order against the Respondent writ Petitioner setting aside the resolution taken by the Board of the Bank re-opening the disciplinary proceeding without giving an opportunity and/or hearing to the Respondent-writ Petitioner. It was submitted that after all the Board in its wisdom being the disciplinary authority dropped the disciplinary proceeding and revoked the order of suspension and that the State Government had no authority and/or jurisdiction to re-open the same unless the condition laid down u/s 32(2) of the said Act was fully complied with or fulfilled and that before such prejudicial action is taken it is obligatory on the part of the State Government to afford an opportunity of being heard both to the Bank and the writ Petitioner. Section 32(2) of the said Act reads as follows:

The State Government may, by order for reasons to be recorded in writing, rescind or suspend for a period specified in the order, any proceeding or resolution of any general meeting of a co-operative society or of any meeting of the Board thereof which it considers to be not in conformity with the provisions of this Act or the Rules or with any other validly issued by the State Government or the Registrar, and may do all things necessary to secure such conformity, or may rescind any proceeding or resolution which it considers likely to affect

adversely the interest of any co-operative society or member thereof or of the co-operative movement in general.

On a plain reading of the provisions of Section 32(2) of the said Act it is clear that the State Government can rescind or suspend any proceeding or resolution of any meeting of a co-operative society only after reasons to be recorded in writing and resolution could be rescinded or suspended if the State Government considers to be not in conformity with the provisions of this Act or the rules or with any order validly issued by the State Government or the Registrar and may do all things necessary to secure such conformity, or may rescind any proceeding or resolution which it considers likely to affect adversely the interest of any Co-operative Societies. or in other words, after recording the reasons the State Government may suspend or rescind any resolution of co-operative societies on the ground that the same was not in conformity with this provision of this Act and/or Rules or with any order validly passed by the State Government or the Registrar and then the State Government may pass any order and do all things necessary to secure such conformity, and only in case where it is found that any resolution or proceeding is likely to affect adversely the interest of the co-operative societies, then it cannot rescind the same. Accordingly, the first precondition is to record reasons and the second condition is that if Government considers that the resolution or proceeding was not in conformity with the provisions of any Act and/or Rules or any order passed by the State Government or the Registrar and only in that event the State Government may do all things necessary for such conformity, but only in a case where resolution or proceeding was likely to affect adversely the interest of the co-operative society or member thereof it can rescind the same. In that instant case, it is clearly evident that the State Government had stated that the Governor is satisfied that the aforesaid resolution has adversely affected the interest of the Bank and shall be clearly violative of the Hon''ble Court's order. If any resolution is passed in violation of the order of the Court, in that event, the provisions of Section 32(2) of the said Act could not be invoked as in case of the violation of the order passed by this Court, this Court can only draw up a proceeding for contempt if there was any wilful violation of any order passed by this Court. On fact, we agree with the learned trial Judge that there was violation of the order passed by this Court and that there was no restriction on the power of the Board to withdraw the departmental proceeding. What was restrained by this Court by an interim order was that no prejudicial action should be taken against the writ Petitioner and communicated to him until disposal of the writ application. The interim order was passed, as rightly held by the learned trial Judge, for protecting the interest of the writ Petitioner and the same could not be construed by any stretch of imagination as restraining the disciplinary authority from passing any order dropping the disciplinary proceeding altogether. Accordingly, the first ground disclosed as the reason utterly fails. The second reason that was disclosed was mere mechanical reproduction of the language of the section. Mere mechanical reproduction of the provisions of the section cannot be construed as reasons. In

Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others, it was observed that in recent times, the judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. The State activity too is becoming fast pervasive. As the State has descended into commercial field and joint public sector undertakings have grown up, the stake of public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze: these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for action on the record assures credibility to the action, disciplines, public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by administrative superior and by judicial process.

6. In *State of Gujarat v. Batel Raghav Natha and Ors.* AIR 1969 S.C. 1287 it was held that the Commissioner should indicate his reasons, however briefly, so that an aggrieved party may carry the matter further, if so advised. The Commissioner in these proceedings cannot decide the questions of title against occupant. The Commissioner in this case had boldly stated his conclusion but without disclosing any reason which was held to be invalid.

7. In *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, it was held that reasons were harbinger between the mind of the maker of the order to the controversy in question and the decision or the conclusion arrived at. They also exclude the chances to reach arbitrary whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. When an order affects the right of a citizen or a person irrespective of fact whether it is quasi-judicial or administrative order and unless the rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principles of natural justice or fair play require recording of germane and precise relevant reasons as a part of fair procedure. In an administrative decision, the order/decision itself may not contain reasons. It may not be the requirement of the rules but at least the record should disclose reasons. It may not be like a judgment. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The Appellants or Revisional authority, if it affirms such an order, need not give separate reason. If the appellate or Revisional authority disagree, the reason must be contained in the order under challenge. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record.

8. In *S.N. Mukherjee Vs. Union of India*, the Supreme Court on review of various

decisions on this point held that in view of the expanding horizon of the principles of natural justice, 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 particularly statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority concluding exercise of judicial or quasi-judicial functions to 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 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. 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 underlying 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. Therefore, 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. The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. Therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subjective authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or Revisional authority, if it affirms such an order, need not give separate reasons if the appellate or Revisional authority agrees with the reasons contained in the order under challenge.

9. Apart from the recording of reasons in the order, it is also incumbent to communicate the reasons to the persons affected. The Supreme Court in the case of *Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others*, observed that where law requires reasons to be recorded in a particular order affecting prejudicially the interests of any persons who can challenge the order in the Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to

communicate the reason is not expiated.

So, the right to know the reason is accepted as a part of principles of natural justice.

10. Accordingly, in the instant case, the condition precedent for exercise of jurisdiction u/s 32(2) of the said Act was wholly non-existent as the authority concerned failed to disclose any reason which are germane to the issue. The reasons are links between the materials on which certain conclusions are based and actual conclusion. They disclose how the mind is applied to the subject-matter for decision. Whether it is purely administrative or quasi-judicial, it should reveal a rational nexus between the facts considered and conclusion reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. Reason plays a very important factor inasmuch as reason discloses how the mind is applied between the subject-matter of the decision and that if reasons are disclosed, in that event it would reveal that the conclusion whether passed on actual matters or not.

11. The provisions of Section 32(2) of the said Act provides that "State Government can take action if it considers to be not in conformity with." The Supreme Court had the occasion to examine what is meant by the word "consider". In the case of Ram Chander Vs. Union of India (UOI) and Others, the Supreme Court considered the necessity of recording reasons in disciplinary appeals. Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, provides the matter to be considered by the appellate authority on an appeal against an order imposing penalty. The word "consider" as to the matters indicated therein have different shades of meaning. In the context of the Rule it means an objective consideration by the Railway Board after application of mind which implied giving of reasons for its decision. It was also held that after the 42nd Amendment of the Constitution, the appellate authority must not only give a hearing to the Government servant concerned, but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by Tribunals will promote public confidence in the administrative process.

12. Accordingly, we are in agreement with the view expressed by the learned trial Judge that as the principles of natural justice was not observed by the State Government while passing the order u/s 32(2) of the said Act setting aside the decision and/or resolution of the Board which seriously affected the interest of the writ Petitioner as well as the Board without giving any opportunity of being heard is a nullity. With reference to conferment of power on the high authority is concerned, the Supreme Court in case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, held that beyond the self-deluding and self-asserting righteous presumption, there is nothing to support the so-called "high authority" theory. This theory undoubtedly weighed with some authorities for some time in the past. But its unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it.

13. Accordingly, we do not find any infirmity in the order passed by the learned trial Judge and the appeal is, accordingly, dismissed with costs assessed at 60 (sixty) G.M.S.

14. The learned Advocate for the Appellant has prayed for stay of operation of the above order which is refused. Re. F.M.A.T. 2505 of 1992.

15. Let this appeal be treated as on day's list which was heard analogously with F.M.A.T. 2272 of 1992. Let similar order be passed in F.M.A.T. 2272 of 1992 shall also govern this appeal.

16. Let a xeroxed copy of the above order be given to the parties on the usual undertaking.