

(2016) 12 CAL CK 0034
In the Calcutta High Court
Case No : W.P. No.160 of 2014

Dr. Pradip Kumar Ray Chaudhuri

APPELLANT

Vs

Kolkata Municipal Corporation

RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 226

Citation : (2017) 1 CalLJ 272 : (2017) 1 CalLT 449

Hon'ble Judges : Arijit Banerjee, J.

Bench : Single Bench

Advocate : Mr. Kishore Dutta and Mr. Sayantak Das, Advocates, for the Petitioner; Mr. Alope Kumar Ghosh and Mr. Swapan Kumar Debnath, Advocates, for the KMC

Final Decision : Disposed off

Judgement

Arijit Banerjee, J. - The petitioner is a Medical Officer at the Health Department of the respondent corporation. In this proceeding he challenges an order dated 12 December, 2013 passed by the Appellate Authority in connection with a departmental case initiated against the petitioner by issuance of charge sheet dated 19 December, 2007.

2. The charges levelled against the petitioner were that he was found to be absent from office frequently without prior intimation and even when he was in office, he was rarely found in his chair; he had the habit of sending the visitors to the higher authority unnecessarily to avoid his own responsibilities causing much harassment to the public as well as wastage of time of his superior officers; insubordination and conduct improper and unbecoming of a Corporation employee.

3. A departmental proceeding was held and the enquiry officer in his report dated 20 May, 2010 held the charges to have been established beyond any reasonable doubt.

4. The Disciplinary Authority being the Municipal Commissioner considered the representation of the petitioner in respect of the enquiry officer's report and passed a reasoned order dated 11 January, 2011 accepting the enquiry officer's report and imposed the punishment of withholding of one increment of pay of the petitioner with cumulative effect.

5. The petitioner challenged the Disciplinary Authority's order by way of statutory appeal before the Mayor. The Appellate Authority dismissed the appeal by an order dated 12 December, 2013. This order is under challenge in the present writ application.

6. Appearing on behalf of the petitioner Mr. Kishore Dutta, Learned Senior Counsel submitted that the Appellate Authority has not recorded any reasons in support of the order dismissing the appeal. He has merely stated that after going through the relevant files and considering all the aspects he did not find any cogent reason to interfere with the order of the Disciplinary Authority. This, according to Mr. Dutta, is no reason at all. He submitted that there was no independent application of mind by the Appellate Authority while passing the impugned order. The points taken in the appeal have not been considered by the Appellate Authority. He submitted that such an unreasoned order which *ex facie* shows non-application of mind on the part of the Appellate Authority cannot be sustained.

7. In support of his submission, Mr. Dutta relied on two decisions of the Hon'ble Apex Court. Firstly, he referred to the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney, (2009) 4 SCC 240 and in particular he relied on paragraphs 8 to 12 of the said judgment which read as follows:-

"8. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case (*supra*) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. The view we are taking was also taken by this Court in Divisional Forest Officer v. Madhusudan Rao, JT 2008 (2) SC 253 (*vide para 19*), and in Madhya Pradesh Industries Ltd. v. Union of India, AIR 1966 SC 671, Siemens Engineering & Manufacturing Co. Ltd. v. Union of India, AIR 1976 SC 1785 (*vide para 6*), etc.

9. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

10. The purpose of disclosure of reasons, as held by a Constitution Bench of this

Court in the case of S.N. Mukherjee v. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

11. No doubt, in S.N.Mukherjee's case (supra), it has been observed (vide para 36) that:

"..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."

12. The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority."

Mr. Dutta also relied on the decision in Ram Chander v. Union of India, (1986) 3 SCC 103, and in particular paras 21 to 24 of the judgment. In that case, the Hon"ble Apex Court, inter alia, held that 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 promote public confidence in the administrative process.

8. On the basis of the above submission Mr. Dutta prayed for setting aside of the Appellate Authority's order and for a direction on the respondents to consider the matter afresh.

9. Mr. Aloke Ghosh, Learned Sr. Counsel appearing for the KMC submitted that the Appellate Authority's order need not contain detailed reasons. It need not be like a judgment delivered by Court. It is enough if some reasons are contained in the order. He submitted that in the present case, the impugned order of the Appellate Authority is not totally unreasoned and sufficiently indicates as to why the Appellate Authority has agreed with the Disciplinary Authority.

10. Mr. Ghosh submitted that the charges levelled against the petitioner are serious, i.e. habitual absenteeism, dereliction of duty, misbehaviour, insubordination and causing harassment to visitors. In reply to the charge-sheet there is only a bare denial of the charges. It is a cryptic reply. The enquiry officer has gone into the matter in depth and has found the charges to be established. The Disciplinary Authority duly considered the representation made by the petitioner in respect of the enquiry report and imposed appropriate punishment. The appeal to the Appellate Authority is identical with the representation made in

respect of the enquiry report. No new point was urged in the appeal. The Appellate Authority considered all relevant matters and held that he has no reason to differ from the Disciplinary Authority. Reading the order of the Appellate Authority, it cannot be said that he did not apply his mind. Hence, judicial intervention is not warranted in the facts of the case.

11. In reply, Mr. Dutta submitted that an appeal is a continuation of an original proceeding and there can be no question of raising new points before the Appellate Authority. The Appellate Authority is to consider as to whether or not the issues urged before the Disciplinary Authority were rightly decided. He submitted that none of the grounds of the appeal taken by the petitioner have been dealt with by the Appellate Authority. He reiterated that there has been no application of mind by the Appellate Authority.

12. I have considered the rival contentions of the parties.

13. Law is well-settled that judicial review is not concerned with the decision under challenge but with the procedure followed by the concerned authority in arriving at the decision. What is under scrutiny is the decision making process. It is also well-established that an order passed by an authority which has civil consequences for others must be informed with reasons. Sufficiency of the reasons are not for the Writ Court to consider. So long as the reasons indicate how the mind of the authority has worked in coming to the decision under challenge and so long as the reasons are not perverse, the High Court in the exercise of jurisdiction under Article 226 of the Constitution will generally not interfere.

14. Reasons are the heart and soul of an order without which an order will appear to be arbitrary. Reasons indicate how the authority's mind has worked in coming to a particular conclusion. Without supporting reasons, an order becomes a mere ipse dixit. If an order does not contain reasons in support of the conclusion, it becomes very difficult for the aggrieved party to challenge the same before a higher forum. Similarly, the higher forum would not know the basis on which the impugned order has been passed. Giving reasons in support of a judicial or quasi-judicial or even an administrative order has indeed become a part of the principles of natural justice.

15. In the present case, the Appellate Authority after discussing the background of the case, in the operative portion held as follows:-

"I heard both the parties. Appearing before me, the appellant tried to project his innocence and reiterated his arguments, which have been already recorded during proceeding. The C.O. could not adduce any additional document, which can substantiate his claim regarding his innocence. After going through the relevant file regarding disciplinary proceeding initiated against the appellant and considering all the aspects, I do not find any cogent reason to interfere with order of the Mpl. Commissioner and Disciplinary Authority.

Corporation being a service oriented institution, devotion to duty and punctuality of attendance of officials are very much demanding. Pursuant to the order of the Hon"ble High Court after hearing both the parties, I hold that the appeal, thus fails and the order issued vide Memo No. P/39/VI/11/11 dated 11/01/11, stands confirmed."

16. The Appellate Authority has not discussed or dealt with the grounds urged by the petitioner in the appeal. The basis for dismissing the appeal, as appears from the impugned order, is that the petitioner could not adduce any additional document for substantiating his claim regarding his innocence. I fail to understand what additional documents the petitioner could produce. Further, an appeal is to be decided on the basis of papers and documents that were before the original authority, in this case the Disciplinary Authority. An Appellate Forum would not normally allow additional documents or evidence to be brought on record excepting where facts of the case warrant application of Order 41, Rule 27 of the CPC or principles analogous thereto. In my opinion, in the facts of the case, there could be no question of the petitioner adducing additional documents before the Appellate Authority.

17. The Appellate Authority should have indicated in its order, albeit briefly, as to why he is in agreement with the Disciplinary Authority's order. Saying that he has considered all relevant files and that he does not find any cogent reason to interfere with the order of the Disciplinary Authority, is not sufficient in my view. The Appellate Authority has not dealt with the contentions raised by the petitioner in the appeal. As held by the Hon"ble Apex Court in *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank (supra)*, the order of affirmation need not contain an elaborate reasoning as contained in the order of the original authority, but it must contain some reasons, even in brief. To take a contrary view would mean that the Appellate Authority could simply dismiss the appeal by a one line order stating that it agrees with the view of the lower authority. In my opinion, the Appellate Authority should advert to the evidence on record at least briefly so as to justify his order as to why he agrees with the Disciplinary Authority. Merely to say that he agrees with the order of the Disciplinary Authority because he finds no infirmity in it, is not enough. It is as perfunctory as saying that he agrees with an order because he agrees with the order.

18. There is nothing in the order under challenge to indicate that the Appellate Authority applied his mind independently to the facts of the case. The order under challenge is actually an unreasoned order and cannot be sustained. In view of the aforesaid, the Appellate Authority's order under challenge is set aside and the matter is remanded back to the Appellate Authority for fresh consideration and decision in accordance with law after affording an opportunity of hearing to the petitioner. Needless to say that the order of the Appellate Authority shall be a speaking/reasoned order. The Appellate Authority shall decide the matter afresh within 12 weeks from date of communication of this

order.

19. WP No. 160 of 2014 is accordingly disposed of, without, however, any order as to costs.

20. Urgent certified photocopy of this order and judgment, if applied for, be given to the parties upon compliance of necessary formalities.