
(2010) 08 CAL CK 0116
In the Calcutta High Court
Case No : W.P.L.R.T. 241 of 2008

Gopinath Raha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226

Citation : (2011) 1 CHN 479

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

Bench : Division Bench

Advocate : Shyamal Kumar Bhattacharjee, for the Appellant; D. Ray and H.A. Begum, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

Assailing the order dated 15th July, 2008 passed by West Bengal Land Reforms and Tenancy Tribunal, 1st Bench in O.A. No. 1432 of 2008 (LRTT), this writ application under Article 226 of the Constitution of India has been filed. The impugned order reads such:

This writ petition is thoroughly misconceived and is, therefore, dismissed.

2. On a bare reading of the said order it appears that it is a gross breach of principle of speaking order which is nothing but a facet of natural justice. Every order must be a "speaking order" only for the reason that the litigant should know what actually played in the mind of the Court to pass the judgment. The reasoning is the soul of a judgment. This point has already been settled by the Apex Court by several judgments which are discussed below.

3. 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 of 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 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 of 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 Probhu 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 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.

4. 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 of 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 of Breen v. Amalgamated Engineering Union Ltd., 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 of Shanti Prasad Agarwalla and others Vs. Union of India and others, In the case of 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 of 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 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 of *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 of *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, .*

5. Having regard to such speaking order principle in a recent judgment the Apex Court in the case of *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers, ,* has dealt with the said speaking order principle by holding inter alia that it is nothing but a breach of principle of natural justice if no reason is assigned in any order. Beside such, the concept of Order 14 Rule 2 and Order 20 Rule 1 so far as passing a judgment on discussing all issues also was dealt with and considered in said judgment. Division Bench of this Court wherein one of us (Pratap Kumar Ray, J.) was a Presiding Judge passed the judgment in the case of *Sudhir Kumar Saha v. State of West Bengal and Ors.,* reported in 2010 (1) CLJ (Cal),170(DB) and in the case of *Madhusudan Mondal v. State of West Bengal and Ors.* reported in 2010 (1) CLJ (Cal) 222, discussing principle of said doctrine of "speaking order".

6. Having regard to the aforesaid legal position, the impugned order is not legally sustainable due to breach of the said principle of speaking order.

7. The impugned order is set aside and quashed. The writ application is allowed on that ground.

8. It is made clear that we have not gone into the merits of the matter. The learned Tribunal below is directed to hear the original application de novo and to pass a reasoned decision.

9. The writ application is allowed to that extent.

Harish Tandon, J.

I agree.