

(1981) 11 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 226 of 1981

Mafijuddin Bhuyan

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 27-11-1981

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Rule 115(A)
Constitution of India, 1950 — Article 226, 227

Citation : (1982) 1 GLR 15

Hon'ble Judges : S.M. Ali Mohamed, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : N.M. Lahiri and S. Ali, for the Appellant; B.K. Goswami, A.M. Mazumdar, P.K. Kalita and A.S. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri, J.—Whether State Government is, bound to reader a reasoned while disposing a review, application under Rule 115(A) of the Executive Instructions contained in Chapter VIII, Part VIII of the Assam Land and Revenue Regulation, volume I (for short "Rule 115(A))"? If so, what is the effect of an order which does not contain any reason for the decision ? These are the main questions posed in this application under Article 226 of the Constitution.

2. The then Deputy Commissioner, Kamrup called for applications for the post of Mouzadar, hold interviews and appointed Respondent No. 4 as Mouzadar by his order dated 9.4.79. The Petitioner was one of the applicants. Later the successor in office of the Deputy Commissioner stayed the operation of the order of appointment of Respondent No. 4 by his order dated 30.4.79. Respondent No. 4 questioned the validity of the order in Civil Rule No. 177 of 1979. On 13.5.80 the High Court upon hearing both the parties quashed the order of the Deputy commissioner dated April 30, 1979 as an "appeal" was pending before the Government, The "appeal" was in fact a review application presented by the present Petitioner to the Government tinder "Rule 115 (A)". Though, it was a

consent order, the learned Judge directed the State Government "to dispose of the appeal as expeditiously as possible", The State Government heard and disposed of the matter by making the following order:

The appeal is rejected

Sd/- T.C. Baishya, Deputy Secretary to the Govt. of Assam, Revenue (LR) Department.

3. Learned Advocate General, Meghalaya submits that the State Government was bound to give reasons on the fact and in the circumstances of the case. Counsel described the character of the order as "a dumb order". Learned Counsel for the Respondents submits that there is no right of appeal nor was the State Government obliged to give, any reason while disposing the application for review.

4. The "Mouzadars" appointed under the Regulation perform public duties and they are public servants. They are appointed by responsible public servant, namely, the Deputy Commissioners. Mouzadars have important functions to play including collection of Government revenue. For obvious reasons the State Government considered that there should be some check and control over such appointments and amended the Executive instructions and introduced a new rule as 115(A) which reads as follows:

The State Government may either on its own motion or on an application made review the order of the Deputy Commissioner and Set it aside or may remit the lease to the Deputy Commissioner directing such further action or enquiry as is considered proper according to the circumstances of each case.

(Emphasis added)

The above rule follows Rules 115 and 115A. The Deputy Commissioner have been empowered to appoint, suspend or dismiss a Mouzadar under Rule 115A. Under Rule 115 there is a positive right of appeal against an order of dismissal under Rule 115B but the rule states that there shall be no right of appeal against an order of suspension. As such, an order of dismissal is appealable, other orders are not applicable. However, the new rule introduced in as Rule 115(A) empowers the State Government either on its own motion or on application to review any order of the Deputy Commissioner. As such, the order of appointment of a Mouzadar is viewable by the State Government on its own motion or on an application, The position has not been disputed before us. However Mr. A.S. Choudhury, the learned Counsel for the Respondents has very rightly pointed out that the review application had been referred as an appeal but the right term for it should be "review". We are of the view that the State Government can only review an order of appointment of Mouzadar and there is no right of appeal against such an appointment. The nature of the review power is wide and large. The State Government may set aside the order, remit the case and give further direction according to the circumstances of each case.

5. Now the question that crops up is whether such an important function of the State Government which deals with the appointment of a responsible public servant can be discharged by making a cryptic order which does not contain any reasons. We are concerned, in the instant case about exercise of the power of review when another candidate for the post has contested the validity of the appointment on various grounds. Therefore, the party who has raised the disputations must know the reasons why the grounds raised by him were turned down. This apart the State Government while exercising the power of review performs a public duty, the repository of the power is the State Government itself and not any other instrumentality. The reservation of the power in the State Government is meaningful and pregnant. When (SIC) questions are raised the exercise of power of review assumes a character akin to such power conferred on the Civil Courts and there is a reciprocal obligation on the repository of the power to discharge its function by giving reasons. Such administrative actions are subject to judicial review by the High Court under Articles 226 and 227 of the Constitution. Therefore, the least that we can expect is a speaking order of the authority. When the validity of the decision of the Deputy Commissioner was challenged by the Petitioner on the grounds of (a) commissioner to (SIC) (b) decision rendered by the authority not warranted on material on records and (c) that the Petitioner was more qualified and legally entitled to be appointed in preference to Respondent No. 4, in our opinion, the state Government was bound to give reasons otherwise it would be mutual to conclude that the authority could not meet the challenges or to conclude that the authority had no reason to offer in respect of the contentions raised. Rub 115(A) exposes in clear term that a review order must be based on "objective satisfaction" of the authority to be set forth in the order. Otherwise there will be a potent danger of non-consideration of the contentions raised which would encourage mechanical exercise of power or "rubber stamp" exercise of the power by the authority. Duty to give reason acts as a safety valve which protects arbitrary action of the Government. The Rule does not empower the authority to withhold the reasons in support of the order, Therefore it is a general duty to give reasons by such an authority. The obligation to give reasons on such situation is the minimum requirement of the rule of law. Lord Denning has observed in *Breen v. Amalgamated Engineering Union* (1971) All EH 1148 "The giving of reasons is one of the fundamental of good administration". The Supreme Court in *Khudiram Das Vs. The State of West Bengal and Others*, has held that in a Government of laws "there is nothing alike unfettered discretion immune from judicial reviewability". The executives no less than judiciary under a general duty to act fairly. Fairness founded on reason is the essence of the guarantees epitomized in Article 14 is the principles of law propounded by the Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, . The duty to give reasons is the elementary requirements of quasi-judicial process This is what has been stated by the Supreme Court in *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, and *Commissioner of Income Tax, Bombay Vs. Walchand and Co. Private Ltd.*, . The principles of natural justice demands that an aggrieved person must know

the reason for decisions taken against him. Absence of such an authority multiply writ proceedings. Even discretionary power coupled with duties calls for reasons to be stated as the authority is under a legal duty or obligation to decide the review application one way or the other. The power of review has more depth, width, and contours than those exercisable in the absence of a right of review, say, making of representation or memorandum etc. The rule enjoins the authority to declare its finding on the material, therefore absence of reasons amounts to "failure to constitute the records", which by itself is a ground for quashing an order without any reason. The concept of error of law takes within its fold giving of inconsistent or unintelligible or inadequate reasons. Therefore, giving of "no reasons" is undoubtedly an error of law. A fortiori when application of wrong legal test to the facts found or taking of irrelevant consideration or failure to take relevant consideration can be "error of law", it stands to reason that giving of "no reason" must come within the concept of "error of law". When the right of review has been expressed given to a quasi-judicial authority like the present authority, it is bound to "act fairly". There is an undoubted duty to determine a review according to law on the basis of legally relevant consideration, therefore, it is imperative for the authority to state the reasons for its decision. The holder of such powers must "act fairly". It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done in such proceedings. Giving of reasons is the life-blood of natural justice.

The question left is the effect of failure to give reasons. In *State of Punjab v. Bakhtawar Singh*, AIR 1972 SC 2082, *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, *State of Gujarat Vs. Krishna Cinema and Others*, *The State of Gujarat Vs. Patil Raghav Natha and Others*, their Lordships have held that failure to give reasons, wherever required makes the order invalid.

6. There may be (i) non-supply of reasons both to the party and to the Courts when called upon to show cause (ii) non-supply of reasons to the party but communicating reasons to the Court when asked for and (iii) supply of reasons to the party after undue delay of the communication of the non-speaking order but before the aggrieved persons approach the Court. In the instant case, no reason has been given in the order nor supplied to the Court. In such cases the rule is that the order must be quashed and the authority be directed to examine the matter afresh, In *Bhagat Raja v. Union of India* AIR 1967 SC 1605 as well as in *Chowgule and Co. Pvt. Ltd. Vs. Union of India (UOI)* and another, the Supreme Court quashed the order and directed the Government to decide the review application afresh. Similarly, in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, the Supreme Court quashed the order on the score that the Government had failed to give reasons and remitted the case back for fresh decision according to law. We have no hesitation in setting aside the impugned order of the State Government dated 11.12.80 and direct the State Government to hear and dispose of the review application in accordance with law within 3 (three) months from today. The petition is allowed to the extent indicated above. There is no

order as to cost. Send down the records forthwith.