

(2013) 04 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 28 of 2003

M/s. Khetan Hotels Pvt. Ltd. and Another	APPELLANT
Vs	
Madhya Pradesh State Electricity Board and Others	RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 04 MP CK 0050

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Judgement

Sujoy Paul, J.—This is second visit of the petitioners to this Court. Earlier the petitioners filed Writ Petition No. 1188/1999 before this Court, challenging the electricity bill raised by the respondents. This Court on 6.8.1999 admitted the petition and granted interim order in favour of the petitioners. Lateron, an interlocutory application filed by the petitioners was disposed of in the said writ petition on 13.12.2000 directing the petitioner to approach Dues Settlement Committee. It is directed that after the decision of the Dues Settlement Committee, the interim order shall be vacated. However, the matter was finally decided by this Court by order dated 7.8.2002. Para 7 of the order reads as under:-

7. Accordingly, it is ordered that the application filed by the petitioners for settlement of the claim be referred to the Dues Settlement Committee by the respondent/Board and on such reference being made the said Committee shall proceed to consider the representation/application of the petitioner in accordance with the procedure and policies of the Board and after giving due and proper opportunity of hearing and on making representation or submissions by the petitioners, take a final decision in the matter and dispose of the same by a speaking order. Till the matter is finally disposed of by the Dues Settlement Committee, no coercive step for recovery of the amount shall be taken against the petitioner by the Board. Needless to say that if the petitioner feels aggrieved by the order of the Dues Settlement Committee, they can assail the same before

the appropriate forum in accordance with law.

After the order of this Court, the petitioners submitted another objection/representation dated 28.8.2002, Annexure P-13. The same was followed by yet another representation dated 21.10.2002, Annexure P-14. The representations dated 12.12.2002, Annexure P-15 and 28.12.2002, Annexure P-16, were also filed by the petitioner. In turn, the respondents have passed the impugned order dated 27.12.2002, Annexure P-1, and communicated the decision of the Dues Settlement Committee to the petitioner.

2. This order is called in question by Shri S.P. Jain, learned counsel for the petitioners, on following counts:-

(i) This Court in no uncertain terms while passing the order dated 7.8.2002 made it clear that the order should be reasoned and speaking order. No reasons are assigned in the impugned order as to why the petitioner's stand was not found acceptable by the respondents.

(ii) It is further submitted that for the same set of incident the petitioner was subjected to a criminal case and he stood acquitted on merits by the Judicial Magistrate First Class (JMFC) in Case No. 1423/2004 (decided on 24.4.2006) and this order got stamp of approval from the revisional court in Cri. Revision No. 121/2006, decided on 10.8.2007. Accordingly, by placing reliance on the judgment of Supreme Court, reported in J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, , followed by this Court in Writ Petition No. 8757/2003, learned counsel for the petitioner submits that since the petitioner stood exonerated on merits, the respondents are bound to consider this aspect and now there is no occasion for them to impose the bill on the petitioners.

3. Per Contra, Shri Vivek Jain, learned counsel for the other side, supported the order, Annexure P-1. He submits that speaking order was communicated by the Dues Settlement Committee to the authority, who has issued Annexure P-1 and the said order of Dues Settlement Committee must be pregnant with the reasons. He submits that the bill amount has already been reduced and, therefore, petitioners have no grievance. He submits that reasons for rejection were not required to be communicated to the petitioner.

4. I have heard learned counsel for the parties and perused the record.

5. I find force in the argument of Shri S.P. Jain, learned counsel for the petitioners, that once this Court directed the authorities to pass a speaking order, the order which is communicated to the petitioners must have contained reasons. If the reasons are not communicated to the petitioners and such reasons were kept within the knowledge of the respondent-authorities, the very purpose of direction to pass a reasoned order/speaking order gets frustrated. The necessity to assign reason is dealt with in extenso in a recent judgment of Supreme Court in Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, . The relevant portion of the said judgments reads as under:-

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

A bare perusal of the aforesaid portion shows that it is not only for the judicial and quasi-judicial authorities, it is must for the administrative authorities also to assign reason with a view to ensure fairness and transparency in dealing with a matter. When an order may have an adverse impact or entails civil consequence on the other side, it is indeed more necessary for the authorities to assign reasons. The aforesaid requirement of assigning reasons curbs the possibility of arbitrariness and acting with whims on the part of the authorities.

6. Accordingly, I am unable to accept the contention of the other side that reasoned and speaking order was not required to be communicated to the petitioner and it was sufficient if the reasons were communicated by the Dues Settlement Committee to the Assistant Executive Engineer. In my opinion, the impugned order is liable to be set aside on this score alone.

7. Apart from this, in WP No. 8757/2003 this Court opined that the finding of criminal court shows that the petitioner was not involved in the theft. On that ground, the committee's finding were interfered with by this Court. However, in the present case the judgment of criminal court is passed subsequent to the decision, Annexure P-1, and, therefore, the Dues Settlement Committee had no occasion to take into account the said judgment of the criminal court. In these peculiar facts, I deem it proper to set aside the order, Annexure P-1, and remit the matter back to the Dues Settlement committee with the direction to examine the judgment passed by the aforesaid court and to see whether petitioner is liable to pay any amount with regard to electricity bill. Resultantly, Annexure P-1, dated 27.12.2002 is set aside. The petitioner is directed to submit the copies of the aforesaid judgments within 15 days before the respondent No. 3 along with copy of this order. In turn, it will be open for the respondents to examine the said judgments and pass appropriate orders in accordance with law while taking into account the judgment of Supreme Court in JMD Alloys Ltd. (supra). It is expected that the respondents shall decide the entire issue within three months in accordance with law. If the authorities come to the conclusion that no dues were payable by the petitioner, the amount already recovered shall be refunded to the petitioner within the aforesaid time. If they decide otherwise, a reasoned and speaking order be passed and communicated to the petitioner. It is made clear that this Court has not expressed any opinion on the merits of the case.

With the aforesaid, petition is allowed. No costs.