
(2013) 06 MP CK 0060

In the Madhya Pradesh High Court

Case No : Writ petition No. 3072 of 2005 (S)

Om Prakash Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 06 MP CK 0060

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : S.P. Jain, for the Appellant; Sangeeta Pachori, Dy. Govt. Advocate for the respondents/State, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 22.6.2005 (Annexure P-1) whereby the petitioner's representation against allocation to the State of Chhattisgarh is rejected by the respondents. Shri S.P. Jain, learned counsel for the petitioner submits that the petitioner's wife is also a State Govt. employee and in that situation his allocation to the State of Chhattisgarh was bad in law. He further submits that the other points raised by him in the representation have not been considered in the rejection order. He relied on a judgment passed by this Court in W.P. No. 2743/2005(S) (Akhil Bajpai Vs. Union of India and others) dated 30.4.2008.

2. Learned counsel for the State supported the order.

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

4. Against the allocation order, the petitioner preferred representation Annexure P-3. The respondent No. 1 has rejected the representation by Annexure P-1. It is admittedly a non speaking order and does not contain any reason at all. In other words, no reasons are assigned as to why the points put forth by the petitioner

did not suit the respondent No. 1.

5. This is settled in law that assigning reason is part of fair play in action. Fairness is an integral part of good administration. Fairness and transparency ensures that the person is not subjected to any discrimination or arbitrariness. The necessity to assign reasons were emphasized by the Supreme Court in the case of *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, , in following words:-

- (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 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"

6. In the present case, the impugned order is not a speaking order. Considering the aforesaid and following the order passed in W.P. No. 2734/05, I deem it proper to set aside the impugned order Annexure P-1 to the extent it relates to the petitioner. However, liberty is reserved to the respondent No. 1 to pass appropriate order in accordance with law. Petition is allowed to the extent indicated above. No cost.