
(2008) 03 BOM CK 0036

In the Bombay High Court

Case No : C.A.J.L.P.A. No's. 50-58 of 2008 in Writ Petition No's. 7373, 7428, 7417, 7430, 7433, 7415, 7431, 7426 and 7429 of 2007

Pipe Arts India Pvt. Ltd.

APPELLANT

Vs

Gangadhar Nathuji Golamare

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Constitution of India, 1950 — Article 142, 226
Industrial Disputes Act, 1947 — Section 17B

Citation : (2008) 3 LLJ 121 : (2008) 6 MhLj 280

Hon'ble Judges : Swatanter Kumar, C.J.;J.P. Devadhar, J

Bench : Division Bench

Advocate : K.S. Bapat, instructed by A.D. Patwardhan, for the Appellant; Nitin Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, C.J.—On somewhat similar facts, the learned single Judge had passed the order "Prayer for interim relief is rejected" giving rise to the above nine appeals. As a common question of law is raised in all these appeals, it will be appropriate to dispose of these appeals by a common judgment. However, for the purposes of convenience, we have referred to the facts of W.P. No. 7373/2007.

2. The appellant-company is incorporated under the provisions of the Companies Act, carrying on the business of fabrication of components partly at its factory and partly at the site of its customers with the help of various workmen in its employment.

3. On February 21, 1999, the workmen: suddenly proceeded on an illegal strike and started causing obstruction to ingress of men and material at the gate of the factory. According to the workmen, their services had been terminated orally on August 25, 1999 and, therefore, they referred the matter to the Conciliation Officer seeking reference of their dispute to the Labour Court. Even before the

Conciliation Officer, the appellant-company offered job to the workmen and asked them to report for duty. The Conciliation Officer submitted failure report. The appropriate government referred the dispute for adjudication in accordance with law to the Labour Court, Pune. The IIIrd Labour Court, Pune vide its order dated February 2, 2007, passed an award holding that there was an oral termination of services of the workmen on September 20, 1999 and granted relief of reinstatement and half back wages. This award was challenged by the company under Article 226 of the Constitution of India before this Court by way of filing W.P. No. 7373/2007 wherein the appellant prayed for interim relief by way of stay of the operation of the impugned order. The said writ petition came up for hearing alongwith the other eight connected writ petitions and the learned single Judge, on January 25, 2008, passed the following order:

Heard Mr. Patwardhan, the Learned Counsel for the petitioner-company.

Rule.

Prayer for interim relief is rejected.

Mr. Kulkarni waives service for the respondents.

Called for R. and P.

Liberty to apply for fixing the date of early hearing.

4. The appellant-company challenges the legality, propriety and correctness of the above order on the ground that no reasons have been recorded by the learned single Judge while rejecting the prayer for grant of interim relief to the appellant-company. It is also urged that on finding merit in the writ petition of the petitioner, rule was issued by the learned single Judge which itself is indicative of the fact that even the prayer for grant of interim relief of the petitioner had a merit. Thus, it could not have been rejected particularly without stating any reason. Non-recording of reasons has caused serious prejudice to the interest of the appellant. The counsel for the appellant placed reliance upon an order dated February 26, 2008 of the Division Bench of this Court in the case of Shiv Santosh Dugdhalaya v. Mr. Yashwant D. Purandare (Letters Patent Appeal No. 31/2008 with Civil Application No. 29/2008 in W.P. No. 9274/2007).

5. The learned Counsel appearing for the respondent had no objection in setting aside the order impugned in the present appeal as, according to him also, the Court is expected to record reasons while granting or declining the relief prayed before the Court even by way of interim relief. According to him, the order in L.P.A. No. 31/2008 was on a concession.

6. It is true that the order in L.P.A. No. 31/2008 was passed on a concession recorded and both the parties were ad idem that the learned single Judge should have stated some reasons in support of order rejecting the prayer. May be, the order in that case was passed by consent of the parties but certainly, the principle that judicial orders should be supported by some reasoning, still holds

good. In the case of Union of India and others Vs. E.G. Nambudiri, the Supreme Court has settled the principle that even the administrative authorities in exercise of their powers and while passing orders affecting rights of the people should support their orders by some reason. The fine line of distinction between exercise of power in quasi judicial or statutory capacity on one hand and the administrative capacity on the other was wiped out by holding that administrative authorities were also expected to record reasons in support of their orders may be not detailed orders like judgments. The Court held as under:

However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a Court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the Court to justify its action.

7. In the case of State of West Bengal Vs. Atul Krishna Shaw and Another, , the Supreme Court has clearly stated the principle that giving of reasons in quasi judicial proceeding was the requirement of law as giving of reasons is an essential element of administration of justice and indispensable part of sound system of judicial review.

8. The Supreme Court and different High Courts have taken the view that it is always desirable to record reasons in support of the Government actions whether administrative or quasi judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any order, particularly, the order which can be subject matter of judicial review, is reasoned one. Even in the case of Chabungbam Ibohal Singh Vs. Union of India (UOI) and Others, , the Court held as under:

His assessment was, however, recorded as "very good" whereas qua the appellant it had been stated unfit. As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated unfit, and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made.

9. The requirement of recording reasons is applicable with greater rigour to judicial proceedings. Judicial order determining the rights of the parties

essentially should be an order supported by reasoning. The order must reflect what weighed with the Court in granting or declining the relief claimed by the applicant.

10. In the case of *Jawahar Lal Singh Vs. Naresh Singh and Others*, , accepting the plea that absence of examination of reasons by the High Court on the basis of which the trial Court discarded prosecution evidence and recorded the finding of an acquittal in favour of all the accused was not appropriate, the Supreme Court held that the order should record reasons. Recording of proper reasons would be essential, so that the Appellate Court would have advantage of considering the considered opinion of the High Court on the reasons which had weighed with the trial Court.

11. May be, while entertaining the interim applications, the orders are not expected to be like detailed judgments in final disposal of the matter, but they must contain some reasons which would provide adequate opportunity and ground to the aggrieved party to assail that order in appeal effectively.

12. In the case of *State of Punjab and others Vs. Surinder Kumar and others*, , while noticing the jurisdictional distinction between Article 142 and Article 226 of the Constitution of India, the Supreme Court stated that powers of the Supreme Court under Article 142 are much wider and the Supreme Court would pass orders to do complete justice. The Supreme Court further reiterated the principle with approval that the High Court has the jurisdiction to dismiss petitions or criminal revisions in limini or grant leave asked for by the petitioner but for adequate reasons which should be recorded in the order. The High Court may not pass cryptic order in relation to regularisation of service of the respondents in view of certain directions passed by the Supreme Court under Article 142 of the Constitution of India. Absence of reasoning did not find favour with the Supreme Court. The Supreme Court also stated the principle that powers of the High Court were circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the basis of whims or subjective opinion varying from Judge to Judge.

13. In the case of *M/s. Hindustan Times Limited Vs. Union of India and Others*, , the Supreme Court while dealing with the cases under the Labour Laws and Employees' Provident Funds and Miscellaneous Provisions Act, 1952 observed that even when the petition under Article 226 is dismissed in limini, it is expected of the High Court to pass a speaking order, may be briefly.

14. Consistent with the view expressed by the Supreme Court in the afore-referred cases, in the case of *State of U.P. Vs. Battan and Others*, , the Supreme Court held as under:

The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set

forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the High Court order not sustainable.

15. Similar view was also taken by the Supreme Court in the case of *Raj Kishore Jha v. State of Bihar and Ors.* JT 2003 (Supp.2) SC 354.

16. In a very recent judgment, the Supreme Court in the case of *State of Orissa Vs. Dhaniram Luhar*, while dealing with the criminal appeal, insisted that the reasons in support of the decision was a cardinal principle and the High Court should record its reasons while disposing of the matter. The Court held as under:

8. Even in respect of administrative orders Lord Denning, M.R. In *Breen v. Amalgamated Engg. Union* observed:

The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree* it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the 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; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

17. Following this very view, the Supreme Court in another very recent judgment delivered on February, 22, 2008, in the case of *State of Rajasthan v. Rajendra Prasad Jain Criminal Appeal No. 360/2008 (Arising out of SLP (Cri.) No. 904/2007)* stated that "reason is the heartbeat of every conclusion, and without the same it becomes lifeless."

18. Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the Us has a right of appeal and, therefore, it is essential for them to know the considered; opinion of the Court to make the remedy of appeal meaningful. It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only desirable; but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of; reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory

stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the Courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion. Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the Article, Black robed Bureaucracy Or Collegiality Under Challenge, (42 MD.L. REV. 766, 782 (1983)), observed as under:

My own guiding principle is that virtually every appellate decision requires some statement of reasons. The discipline of writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the Court that a bare signal of affirmance, dismissal, or reversal does not.

19. The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation. Paul D. Carrington, Daniel J Meador and Maurice Rosenberg, Justice on Appeal 10 (West 1976), observed as under:

When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid.

20. The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinized by the Appellate Court. The reasons indicated by the Court could be accepted by the Appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the

ends of justice.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on September 13, 2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said,

The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written:

- (1) to clarify your own thoughts;
- (2) to explain your decision to the parties;
- (3) to communicate the reasons for the decision to the public; and
- (4) to provide reasons for an appeal Court to consider.

22. Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In *Alexander Machinery (Dudley) Ltd. v. Crabtree* 1974 ICR 120, the Court went to the extent of observing that "Failure to give reasons amounts to denial of justice". Reasons are really linchpin to administration of justice. They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons is the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher Courts but is even of great utility for providing public understanding of law and imposing self-discipline in the Judge as their discretion is controlled by well established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award.

23. The Court has to consider such a plea keeping in view the provisions of Section 17B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged

to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various contentions were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals.

24. On analysis of the above principles and their application in correct perspective, in our humble opinion, the canons of judicial propriety requires that Court should pass reasoned orders even while dealing with the applications for interlocutory prayer, no matter how briefly or precisely. The opinion of the Court should be discernly reflected in the order. We do express a poised hope that the Courts would record reasoned orders.

25. Resultantly, the appeals are accepted. Impugned order is set aside. The cases are remanded to the learned single Judge for hearing of the application afresh in accordance with law. No order as to costs.