

(2010) 12 CAL CK 0081
In the Calcutta High Court
Case No : C.O.L.R.T. No. 9 of 2010

Shefali Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

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

West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 10

Citation : (2011) 2 CHN 283

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

Bench : Division Bench

Advocate : Mrinal Kanti Ghose, for the Appellant;

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Assailing the order dated 8th July, 2010 passed by West Bengal Land Reforms and Tenancy Tribunal in O.A. 1981 of 2009 (LRTT), this writ application has been filed.

The impugned order reads such:

Learned Counsel for the Petitioner is present. Learned Government Representative is also present. The application date 25.08.09 u/s 10 of West Bengal Land Reforms and Tenancy Tribunal Act, 1997 filed by the applicant praying for giving direction to the Respondent authorities to cancel/set aside the notice date 15.07.09 being annexure "A" of this application is taken up for hearing on the point of admission. Perused the instant application. Heard the learned

Counsel for the Petitioner as well as learned Government Representative. Learned Government Representative submits that the instant original application should be rejected summarily as the same is misconceived one. On perusal of materials on record, we find nothing to admit the instant original application. As a result of it, the original application is rejected summarily.

O.A. No. 1981 of 2009 (LRTT) is thus disposed of. Let a plain copy of this order duly countersigned by the principal officer of the Tribunal be made over to the learned Government. Representative for communication to the B.L. and L.R.O. concerned for information and xerox certified copy of the order, if applied for by the applicant, be delivered subject to payment of requisite Court-fees.

2. On a bare reading of the order it appears that the learned Tribunal below rejected the original application summarily only with the finding that the application was misconceived. No reason assigned why the application was misconceived. It is the case of the writ Petitioner before us that against the dead persons the barga recording proceeding was initiated and despite filing of the names of the legal heirs, the revenue officer did not add those legal heirs as a party in the proceeding and serve fresh notice. Against that, he filed the application before the Tribunal.

3. Considering the order impugned, we are of the view that the order is vitiated for breach of principle of reasoned order. Each and every order must be with specific reason is a settled legal position of the law.

Judgments on that field are as follows:

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 *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 *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 *Prabhu 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 *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 *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 Ltd. (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 *Shanti Prasad Agarwalla and others Vs. Union of India and others*, . In the case *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 *State of West Bengal and Another Vs. Alpana Roy and Others*, on considering the cases, namely, *Breen (Supra)*, *Amalgamated Engineering Union Ltd. (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 unscrutable 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 *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 *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 *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 Sudhir Kumar Saha v. State of West Bengal and Ors. reported in 2010 (1) CLJ (Cal) 170 (D.B) and in the case 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. Considering that and the aforesaid findings the impugned order is not legally sustainable for non-assigning of any reason. Accordingly, it is set aside and quashed.

7. Learned Tribunal below is directed to dispose of the original application de novo on hearing the parties and to pass a reasoned order.

8. Writ application is allowed.

9. Urgent photostat certified copy of this order, if applied for, be handed over to the parties on compliance of necessary formalities.

H. Tandon, J.

10. I agree.