(1999) 11 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13198 of 1997

State of Haryana and Others — APPELLANT

Vs

Adarsh Filling Station — RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 7
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 — Rule 26A

Citation : (2000) 124 PLR 763 : (2000) 1 RCR(Civil) 361

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Jaswant Singh, for the Appellant; Atul Lakhanpal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is petition a to quash the order dated 18.4.1996 passed by the Commissioner, Hissar Division, in Executive Appeal No. 7 of 1995-96 Adarsh Filling Station v. Director, Town and Country Planning, Haryana, Chandigarh.

2. The facts relevant to the decision of the issue raised in this case are that while accepting the application dated 27.10.1994 submitted by Indo Burma Petroleum Company Limited (a Government of India enterprise), Deputy Commissioner, Bhiwani issued "No Objection Certificate" under the Petroleum Act and the rules framed thereunder for installation of retail outlet at the disputed site. The Executive Engineer, Provincial Division, PWD, B&R, Charkhi Dadri also granted no objection for this purpose. However, the application filed by the respondent No. 2 for grant of permission to change the land use was declined by the Director, Town and Country Planning, Haryana (Petitioner No. 2) on the following grounds:

(i) That from the documents submitted by you the ownership of the land is not clear which is a prerequisite as per the provisions of Rule 26-A of the Punjab

Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1995.

(ii) That proof with regard to the sponsorship by any oil company for the proposed Fuel Filling Station has not been submitted with the documents.

(iii) That no construction within statutory restricted belt of 30 mtr. along Delhi-Narnaul Scheduled Roads is permitted as per provision of Section 3 of the Punjab Scheduled Roads and Controlled Areas, Restriction of Unregulated Development Act, 1963."

3. Two days after the receipt of the communication dated 23.3.1995, the respondent No. 2 submitted representation Annexure P.6 reiterating request for grant of permission for change of land use. After some correspondence, the petitioner No. 2 again declined its request, as would appear from the letter Annexure P.9 dated 25.8.1995. This was challenged by respondent No. 1 before respondent No. 2. Similar appeal was filed by Mittal Auto Service Store. By the impugned order, the respondent No. 2 accepted both the appeals and declared that there can be no objection to the grant of permission for change of land use by the respondent No. 1.

4. The petitioners have challenged the impugned order primarily on the ground that the findings recorded by the respondent No. 2 are contrary to the provisions contained in rule 26-A of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Rules, 1965 (hereinafter referred to as the Rules) read with Section 7 of the Punjab Scheduled Roads and Controlled Area (Restriction of Unregulated Development) Act, 1963 (hereinafter referred to as the Act). They have also challenged the maintainability of the appeal filed by the respondent No. 1 on the ground of bar of limitation. They have averred that the respondent No. 2 could not have entertained the appeal without passing an order for condonation of delay. The petitioners have also challenged the authority of the respondent No. 2 in granting permission to the respondent No. 1 without insisting on compliance of the provisions of the statute.

5. In the written statement filed by it, the respondent No. 1 has supported the order passed by the Commissioner. It has pleaded that the provisions of Section 7 of the Act and Rule 26-A of the Rules are not applicable and its failure to submit Form CLU-1 could not be made a ground by the petitioner No. 2 to decline permission for change of land use.

6. The first contention urged by the learned Deputy Advocate General is that the order passed by the respondent No. 2 should be quashed because it does not contain reasons for interference with the order passed by the petitioner No. 2 and for accepting the prayer of the respondent No. 1 for sanctioning the change of land use. He further argued that the respondent No. 2 did not have the jurisdiction to facilitate the change of land use by the respondent No. 1 without compliance of Section 7 of the Act read with Rule 26-A of the Rules. Shri Lakhanpal argued that the rejection of the application filed by the respondent No.

1 was wholly erroneous and therefore, the respondent No. 2 has lightly set aside the order passed by the petitioner No. 2. He further argued that the absence of detailed reasons in the impugned order should not be made a ground to invalidate the same because the so-called non-compliance of Section 7 of the Act read with Rule 26-A of the Rules was technical in nature.

7. We have thoughtfully considered the respective submission. In our opinion, the order passed by the respondent No. 2 deserves to be quashed on the ground that it does not contain reasons for indirect invalidation of the decision taken by the petitioner No. 2. A careful reading of the impugned order shows that after briefly noticing the facts and the contentions urged by the parties, the respondent No. 2 disposed of the appeal filed by the respondent No. 1 making the following observations:-

"I have heard learned counsel on both sides and gone through the record. The title and 20 years lease is not material for the purpose of any exemption in land use to be allowed by the Director, Town and Country Planning. Moreover, the correct site plan should be given by the applicant. As regards objection of the respondent-State that application should be forwarded on Form CLU-1 on account of the area being a part of the Controlled Area and Not on ST-II of Rule 4, this Court is of the view that the entitlement of the State is to see that the development charges are paid by user and permission is given only sparingly for change of land use. A facility like petrol pump has to be within the easy access of the citizens along road in any urban area. So far as the 20 years lease is concerned, it is as good as the title. If the development charges are paid by the applicant under Form ST-II there is not much of difference as far as the interest of the State are concerned whether application is made under Form CLU-1 or ST-II. It is, however, stated that the applicant-Petrol Pump owner shall leave minimum area of 30 meters unbuilt between the road and the petrol pump. With these observations the appeals are disposed of."

8. A bare reading of the above extracted portion of the impugned order shows that the respondent No. 2 has not applied his mind to the statutory requirements incorporated in the Act and the Rules. This conclusion is amply supported by the fact that the respondent No. 2 has indirectly upset the decision of the petitioner No. 2 without holding that the said decision is contrary to law or arbitrary or perverse.

9. We also agree with Shri Jaswant Singh that the order passed by the respondent No. 2 should be quashed on the ground that it is a non-speaking order, inasmuch as, the points urged on behalf of the petitioners in support of the order passed by the petitioner No. 2 have not been considered, dealt with and decided.

10. The principles of natural justice are multi-dimensional and the Courts have applied different facts of these principles in different cases. In the recent past, a new dimension has been added to the principles of natural justice, namely that

every quasi-judicial authority/Tribunal must not only record reasons in support of the order they make but such reasons should be also be communicated to the affected party. The requirement of recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the cornerstones of our constitutional set up. The administrative authorities charged with the duty to act judicially cannot decide the matters on considerations of policy of expediency. The requirement of recording of reason by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant consideration and minimizes arbitrariness in the decision making process. Another reason which makes it imperative for the quasi-judicial authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filling statutory appeal and revision but also by filing writ petition under Article 226 of the Constitution. Such decisions can also be challenged by way of appeal under Article 136 of the Constitution of India. The High Courts have the power to issue writ of certiorari to quash the orders passed by the quasi-judicial authority/Tribunal. Likewise, in appeal the Apex Court can nullify such order/decision. These powers can be effectively exercised by the superior Courts only if the order under challenge contains reasons. If such order is cryptic and devoid of reasons, the Courts can''t effectively exercise the power of judicial review and we cannot countenance a situation in which the administrative authorities vested with the power to decide the rights of the parties may stultify the powers of the Courts simply by not recording reasons in support of their decisions and/or by refraining from communicating such reasons to the affected person. This is the reason why the Courts have insisted on rigorous compliance of the requirements of recording of reasons and communication thereof by every quasi judicial authority. Some of the judicial precedents which can appropriately be cited to support the above mentioned proposition are :-

(i) Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, .

(ii) Bhagat Raja v. Union of India and Ors. AIR 1967 S.C. 1006.

(iii) Travancore Rayon Ltd. Vs. Union of India (UOI), .

(iv) Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, .

(v) Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another, .

(vi) Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, .

(vii) S The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, .

(viii) S.N. Mukherjee Vs. Union of India, .

(xi) Shanti Prasad Agarwalla and others Vs. Union of India and others, .

(x) Krishna Swami Vs. Union of India and another, .

(xi) M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others, .

11. In Rajasthan State Road Transport Corporation, Jaipur Vs. Smt. Poonam Pahwa and others, , a Division Bench of this Court held that while exercising appellate power under rule 20 of the Punjab General Sales Tax Act, 1948, the Tribunal is bound to record reason for not entertaining the contentions urged behalf of the appellant.

12. Applying the ratio of the above mentioned judicial precedent to the facts of this case, we hold that the impugned order which is devoid'' of cogent reasons deserves to be quashed on the ground of violation of the principles of natural justice.

13. For the reasons mentioned above, the writ petition is allowed. Order Annexure P.1 is quashed qua respondent No. 1 with the direction to the respondent No. 2 to decide the appeal filed by the respondent No. 1 afresh in accordance with law by passing a speaking order.