

(2010) 03 SC CK 0056

In the Supreme Court Of India

Case No : Civil Appeal No. 2225 of 2010 (Arising out of SLP (C) No. 2708 of 2010)

The Secretary and Curator, Victoria Memorial Hall

APPELLANT

Vs

Howrah Ganatantrik Nagrik Samity and Others

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Citation : AIR 2010 SC 1285 : (2010) 5 AWC 4997 Supp : (2010) 2 JT 566 : (2010) 2 SCALE 739 : (2010) 3 SCC 732 : (2010) 4 SCR 190 : (2010) 3 UJ 1540

Hon'ble Judges : K. G. Balakrishnan, C.J.;Deepak Verma, J.;B. S. Chauhan, J

Bench : Full Bench

Advocate : Harish N. Salve and Ahin Chawdhary, Sangeeta Mandal, Jayasree Singh, Swati Sinha and Utam Mandal, for Fox Mandal and Co, for the Appellant; Subhas Datta, (Party-in-Person Respondent No. 2), Soumya Chakraborty and Rajendra Banerjee for D.B. Vohra, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—Leave granted.

2. The appellant has preferred this appeal against the judgment and order of the High Court of Calcutta dated 21.8.2009 by which the application filed by the appellant for modification of order dated 28.9.2007 passed in Writ Petition No. 7987(W) of 2002, stood rejected.

3. The facts and circumstances giving rise to this appeal are as under:

A foundation stone of Victoria Memorial Hall (hereinafter called 'VMH') was laid by the king George the Vth (the then Prince of Wales) on January 4, 1906. Between years 1908 and 1921 various objects of arts, manuscripts, medals, arms and armours were collected and preserved for being transferred and displayed at VMH upon construction and on December 28, 1921 its construction was mostly completed. It was inaugurated by the Edward, the VIIIth (the then Prince of Wales) and was opened for public viewing. Afterwards, the Museum

attained the status of National Museum of modern Indian history starting from 18th century. In the year 1925, illustrated catalogue of exhibits in VMH was published. Between years 1934 and 1935 cupolas were added to the main monument. The memorial is the repository of a largest number of Daniells' paintings in the world. It possesses the third largest painting in the world-Vassili Verestchagin's "The State Procession of the Prince of Wales into Jaipur in 1876". The memorial's philatelic collection on Indian postal history is equally large. Among other important collections, one may refer to Mughal emperor Aurangzeb's hand-written Quran or Dara Sikoh's translation of the Upanishads. Equally important and fascinating are the works of Johann Zoffany, Tilly Kettle, Hodges, Samuel Davis, Robert Home, Reynolds, Charles D'oyly, Emily Eden, George Stubbs' painting of Hastings, and Qazar, painting of Fatah Ali Shah, Tipu Sultan's personal war-diary, and the Cannon-balls of the battle of Plassey.

Other than the Curzonian scheme of collection and arrangement of the exhibits, the post-independence collections include National Leaders' Gallery as well as collections of other artifacts-Bankim Chandra's writing desk, Mahatma Gandhi's ashes, paintings of Abanindranath, Atul Bose and Jamini Roy, etc. A total of about 27,000 artifacts (e.g. painting, watercolours, stamps, coins, arms and armour) exists in the VMH.

VMH monument has a covered area of 1.7632 acres and is situated in a portion of a large campus having an area of about 57 acres. There have all along been within the Campus annexe buildings having total covered area of around 5000 Sq. meters. These annexe buildings were built for being used as non family duty quarters, garage for tractors and cars, stores of garden equipment, dormitory, staff canteen, recreation room, union room and a block of toilets. The old annexe buildings have become dilapidated through passage of time.

In December, 2000, the Government of India advised VMH to take steps for modernisation of VMH with the help of National Institute of Design.

VMH is administered and managed by an autonomous Board of Trustees constituted under Victoria Memorial Act, 1903 (hereinafter called 'Act'). The Chairman of the Board of Trustees is the Governor of the State of West Bengal. Other members include the Chief Justice, Kolkata High Court, Mayor, Kolkata Municipal Corporation, Principal Secretaries of the Departments of Culture, Finance, Tourism, Higher. Education, Accountant General of West Bengal and various other prominent citizens. For better preservation and maintenance of VMH, National Environmental Engineering Research Institute (hereinafter called as 'NEERI') had given various suggestions in April 1992 but the same remained unattended. In February, 2002 West Bengal Pollution Control Board submitted a report on air quality around the VMH in which it was suggested to make a further study into the matter by Expert Organization like NEERI.

4. Alleging mismanagement, misuse and various types of abuses of the historic museum and contending that the very existence of VMH was at stake, Writ

Petition No. 7987(W) of 2002 was filed as a Public Interest Litigation by the Howrah Ganatantrik Nagrik Samity, Respondent No. 1, which sought large number of reliefs, particularly, directing the respondents therein to preserve, protect and maintain the historical monument, to review present status and applicability of recommendations made by NEERI in April, 1992 for protection of the museum and to start action thereon forthwith, to stop leaking of rain water through the rooftop, to repair the structure of the museum, to prepare a complete inventory/catalogue of all the objects of the museum based on record, to remove all sorts of office accommodations and other occupancies not related to preservation and maintenance of the museum from inside the museum, to make arrangements for more and more display of all objects of the museum to visitors through rotational process, to make complete census and numbering of trees and to prevent falling thereof, to arrange for the supply of potable water, to arrange the vehicular traffic in a manner not creating any kind of pollution and to take measures to prevent any kind of air pollution etc. etc. The High Court dealt with all the issues one by one and passed interim orders from time to time.

5. At the time of initial hearing of the Writ Petition, the High Court, vide its order dated 27.11.2003, constituted an Expert Committee for improving the environment of VMH, the appellant herein. It consisted of 14 Members viz. Member of Heritage, Conservation Committee, Kolkata; Managing Director, Ghosh Bose & Associates (P) Ltd., Kolkata; Scientist & Head, National Environmental Engineering Research Institute, Kolkata Zonal Laboratory; Suptd. Archeologist, Archeological Survey of India, Kolkata Zonal Office; Addl. Commissioner of Police, Kolkata; Chief Environmental Officer, Department of Environment, Govt. of West Bengal; Secretary and Curator, Victoria Memorial Hall; Exe. Engineer, Calcutta Central Division, Central Public Works Department (Civil Wing), Govt. of India; Chief Traffic and Transportation Engineer, Govt. of West Bengal; Senior Environmental Engineer & Incharge, Eastern Zonal Office, Central Pollution Control Board; Exe. Engineer, Presidency Circle 1, Public Works Department, Govt. of West Bengal; Deputy Chief Municipal Architect and Town Planner, Kolkata Municipal Corporation; Senior Environmental Engineer, West Bengal Pollution Control Board; and Member Secretary, West Bengal Pollution Control Board.

6. The Expert Committee made various recommendations including that the appellant should enhance its existing facilities so as to make it an eminent centre for art and culture of international standard and to find out possibility of erection of a new building within the same campus to provide facilities for that purpose.

7. The Board of Trustees explored the means for implementation of the suggestions of the Expert Committee and held various meetings. After considering the views of the Expert Committee, the Board of Trustees after due deliberation accepted the proposal for construction of an annexe building replacing the existing cluster of annexe buildings which had become dilapidated. For this purpose, a Memorandum of Understanding with the approval of

Government of India, Ministry of Culture in consultation with Ministry of Law, was signed with the Calcutta Tercentenary Trust (for short, "CTT"), a trust registered in London. Under the said Memorandum of Understanding, CTT is to provide Rs. 48 crores and only the cost of the area to be occupied by the administrative office of VMH is to be borne by the VMH.

8. However, the matter was decided finally vide judgment and order dated 28th September, 2007, dealing mainly with the following issues:

A. Removal of the hawkers from the vicinity of the Hall.

B. Modernisation of the Gallery.

C. Environmental Management Plan.

D. Parking of vehicles, traffic signals and stopping goods vehicle.

E. Burning of dry leaves in the VMH Area.

F. Shifting of Administrative Office.

G. Further construction within the VMH Area.

9. So far as issue at point (G) is concerned, the Court rejected the recommendations made by the Expert Committee, refusing the permission to raise the construction in the VMH Campus.

10. The appellant moved an application to modify the order dated 28.09.2007 only to the extent that it may be permitted to raise the construction upto the height of 30 ft. in an area where it already had cluster of constructions, which is being used as a non-residential staff quarters on various grounds, inter-alia, that the appellant made a serious attempt to acquire the land/building for having the museum and recreation centre in the close vicinity of the monument. The appellant also deposited Rupees one crore with Kolkata Municipal Corporation (hereinafter called as 'Corporation') to acquire the constructed area, but it could not get any space. The amount was refunded by the Corporation for the reason that the construction raised by the Corporation was for residential purpose.

11. The High Court considered the matter at length, took into account various issues relating to maintaining ecological balance, environment, problems relating to vehicular traffic etc., but ultimately rejected the application for modification, so far as permitting the construction of building after demolition of non-residential staff quarters was concerned. Hence, this appeal.

12. Shri Harish N. Salve, learned senior counsel appearing for the appellant, submitted that in all big museums throughout the world, administrative offices including Curators' and Director's offices are situated in the same campus. The appellant tried its best to get an alternative accommodation nearby but could not succeed in spite of its best efforts. The Act does not restrain the appellant to use the campus for the purpose other than activities connected with the memories of Queen Victoria. More so, the Expert Committee appointed by the High Court itself

had made the recommendation for having such a building. The High Court rejected the application without taking into consideration the submissions raised by the appellant. The High Court did not record any reason for not granting the permission for construction. Thus, the appeal deserves to be allowed.

13. On the other hand, Shri Subhas Datta, Respondent No. 2 and General Secretary of Respondent No. 1, appearing in person, has vehemently opposed the appeal contending that permitting any construction in the said campus would cause serious prejudice to the monument. New building, if permitted to be raised, would adversely affect the protection and preservation of the monument. Hence, the appeal is liable to be dismissed.

14. We have considered the rival submissions canvassed on behalf of the parties and perused the record.

15. The appellant submitted before the High Court that modification of the order was necessary and the appellant be permitted to raise the construction upto the height of 30 ft. at the same place where it has cluster of constructions which is being used as a non-residential staff quarters. The necessity had arisen for the reason that VMH is basically a museum and the process of 'acquisition of various costly' objects of art or old documents, manuscript etc. had been initiated even prior to the actual construction of the VMH. Its recognized activities conform to the definition of a museum as given in Section 1 of Article 3 of the Statute of International Council of Museum, according to which, a Museum is a non-profit permanent institution in the service of society and its development, open to the public which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purpose of education, study and enjoyment. The appellant claimed that it is institutional member of International Council of Museums and had been paying subscription to the Indian branch of International Council of Museums; that approx. 29,000 items of objects of arts are stored within the VMH building and some of those were lying idle and not displayed to the public due to dearth of space. It was contended that the height of the monument is 56.0832 meters and, therefore, the construction, if permitted, to be raised would, by no means, adversely affect the grand view of the monument and it would not hamper any activity of the monument.

16. Thus, the High Court had to determine mainly that if such a construction is permitted, whether it would, by any means, hamper the preservation or protection of the monument?

17. The High Court dealt with all other issues regarding pollution hazards etc. and took note of the fact that large number of art crafts have been collected for a long-long time and it included art crafts not connected with Queen Victoria. The Act governing the VMH did not contain any provision permitting or restraining the use of any part of VMH compound for the purpose, other than connected with Queen Victoria. The Act contained the provisions that the Trustees may with

previous approval of the Central Government, by Notification in the Official Gazette, make Regulations not inconsistent with the Act and the Rules made thereon, for enabling the body to discharge its functions under the Act. The Rules must be enacted substantially for erection, maintenance and management of memorial and care and custody of the objects. The trustees have a right to acquire a new property for the purpose of better management of the memorial. The High Court came to the conclusion that the Act "permits the trustees to acquire new property movable or immovable under the control and supervision of the Central Government and thus there is no bar in running its activities from different premises". Therefore, even for the purpose of carrying out the activities in relation to the monument, the trustees may acquire movable or immovable property outside the premises of said monument. The Court observed that the structure was unique in nature and it is one of the wonderful objects in the world and its beauty and value should not be marred in any way for the purpose of construction of auditorium, cafe, sitting area for guests, rest rooms etc. and any new construction within the campus would be detrimental to the present structure situated thereon. The Court emphasised that the appellant should acquire property, movable or immovable outside the monument as has been done in Salar-Jung-Museum, Hyderabad and other places.

18. In fact, the High Court arrived at the conclusion, that if construction is permitted it would not only adversely affect the ambience of the monument but would be detrimental to the present structure. However, such a conclusion has been reached without giving any plausible reason whatsoever.

19. The Expert Committee was appointed by the High Court itself vide order dated 27.11.2003. It consisted of experts of various subjects, rendering services in different fields. Therefore, it is unfortunate that the High Court not only brushed aside its report, so far as the instant issue is concerned, rather labelled it as a "so-called Expert Committee". The High Court failed to appreciate that the application was filed by the appellant as it was not possible for VMH to get appropriate space nearby the monument in Kolkata. More so, neither the Pollution Control Board, nor Kolkata Municipal Corporation, nor the Suptd. Archeologist of Archeological Survey of India of Kolkata Circle, raised any objection in respect of the construction of a new building. The building was proposed to be constructed by replacing the old existing constructions at a distance of at least 160 mtrs. from the monument. The Court failed to consider that museum activities were to be expanded by the appellant therein, which would not adversely affect the monument at all, particularly when there is no prohibition under the Act to carry out such activities.

20. The High Court failed to appreciate that the proposed building would be designed with great care, ensuring that the new construction would not, by any means, disturb the existing landscape and would be in consonance with the existing ambience and compatible with the architecture and façade of the existing monument. The height of the proposed building would not be more than

10 mtrs. while the height of the monument is more than 50 mtrs. Thus, it would not prevent the view of the monument by any means. The High Court was not justified to impose a total prohibition of construction of the Annexe in place of the existing cluster of buildings, which are in a dilapidated condition. The High Court ought to have given reasons for not accepting the report of the Expert Committee.

21. The High Court vide order dated 28.9.2007 directed to shift the administrative office outside the monument on wrong premises. The material on record suggests that all museums have this kind of accommodation within its campus. The entire administrative office including Curators', Director's office of Salarjung Museum are located within the Main Museum building. Similar is the position with the Indian Museum at Kolkata, National Museum, National Gallery of Modern Art at New Delhi, Chhatrapati Shivaji Maharaj Vastu Sangrahalaya Museum (formerly the Prince of Wales Museum) at Mumbai, Nehru Memorial Museum & Library and National Museum in New Delhi. Same is the position within internationally renowned museums, namely, British Museum, Victoria & Albert Museum, U.K., Louvre, Paris and Museums in Vienna.

22. The Expert Committee had examined the issues at length and submitted its report before the High Court, making various recommendations including:

That setting up structure and/or facility within the VMH compound for commercial amusement and recreational activities will adversely impact the environment, will not be in consonance with the existing local ambience, and increase the visual pollution. The Committee recommends that no structure and/or facility should be built within the VMH compound for the purpose of amusement and recreational activities.

However, the Committee found that the VMH being an eminent centre of art and culture focusing on the heritage of 17th-20th century India and Bengal, lacks several modern facilities like space/facility up to international standard for visiting exhibitions, space/facility for education, research, lecture, library, meeting/reception, and space/facility to serve the public visiting the VMH.

The Committee suggests that the VMH should enhance its existing facility to take a shape of an eminent centre of art and culture of international standard. The feasibility of building visitors' centre and exhibition area in a separate building within the VMH compound to provide the above mentioned facilities should be explored. In any case, this should not disturb the existing landscape, and should also be in consonance with the existing ambience and compatible with the existing architecture of the monument.

(emphasis added)

23. The Court dealt with the aforesaid recommendations on the issue observing:

We, however, do not approve the suggestion of the experts appointed by this Court to find out the feasibility of building any visitor's centre and exhibition area

in a separate building to be constructed within the VMH compound. Such an idea is contrary to the concept of protection of historical monuments. For better utilisation of the space for modernization of gallery, the existing Administrative Office may be removed to some other place and that space can be utilised for the extension of the Gallery but in no circumstances can we approve the idea of making any new construction within the VMH compound for the above purpose.

(Emphasis added).

24. While deciding the application for modification, vide impugned judgment, the High Court held as under:

It appears that the prayer for review has been filed without appreciating the import of the said order regarding preservation of greenery. We find from the affidavit that the sole object of the VMH Authority is to make the said campus a place of brisk activities and entertainment without caring for the protection of the monument itself which was constructed pursuant to the object of the Act. Moreover, for the purpose of the preservation of and display of the additional articles which have been subsequently acquired and which have no connection with the memory of Queen Victoria, we are of the view that there is no just reason for giving permission to construct a new building within the VMH campus. The VMH Authority is free to extend its activity in accordance with law after acquiring new property which is consistent with the object of the Act, Rules and the Regulation, but there is no ground for restricting its extended activity within the original VMH complex itself which would be perilous to the existing structure.

We have already pointed out that the Act itself approves requisition of further property, either moveable or immovable, and thus the order passed by this Court in the past has in no way created any impediment in the activities of the VMH in accordance with law; on the other hand, if the prayer of further construction is allowed for the purpose of the activities mentioned hereinabove, the constant efforts of this Court in preserving the existing memorial for the last seven years by passing various prohibitive orders would be totally frustrated.

(Emphasis added).

25. In fact, the Expert Committee recommended that no part of VMH compound should be permitted to be used for any commercial amusement and recreational activities as it would increase the visual pollution. But the Committee recommended for having a centre and exhibition area in a separate building within the VMH compound. The High Court while disposing of the Writ Petition disapproved the recommendation for having a centre and exhibition area within the VMH compound merely observing that such an area would be contrary to the concept of protection of historical monument. The application for modification has been rejected by the High Court on the grounds that it would be contrary to preserving greenery; such a campus should not have the buildings for brisk activities and entertainment and if permission is granted, it would frustrate the effort of the High Court to preserve the existing memorial for last seven years by

passing prohibitory orders.

The High Court failed to appreciate that in case a historical monument contains such a centre, it cannot be a danger for its protection. More so, as explained hereinabove, most of such museums have such activities throughout the world. The ground of preserving the greenery is totally misplaced and mis-conceived for the reason that building is to be constructed by demolishing the servant quarters etc. which are in a dilapidated condition. As the greenery does not exist at this place the reason given by the High Court is untenable. The other ground that campus should not be used for brisk activities is unsustainable because having the activities in such centre and exhibition area cannot be termed as 'brisk activities'. More so, the High Court had never passed any interim order during the pendency of the Writ Petition for removal of the cluster of buildings which in fact is in dilapidated condition. Therefore, the question of frustrating the entire effort of the High Court to protect the monument could not arise. Indisputably, the writ petitioners/respondents have not been able even to allege that factual averments made in the application for modification were not correct. The impugned order rendered the Memorandum of Understanding of the appellant with CTT for providing a sum of Rs. 48 crores, frustrated.

26. Thus, it is evident that the High Court did not give any specific/good or relevant reason for not accepting the recommendation made by Expert Committee at initial stage or while rejecting the application for modification vide impugned order.

27. The Constitution Bench of this Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, held that "normally the Court should be slow to interfere with the opinions expressed by the experts." It would normally be wise and safe for the Courts to leave the decision to experts who are more familiar with the problems they face than the Courts generally can be.

28. This view has consistently been reiterated by this Court as is evident from the Judgments in *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, ; *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, ; *Central Areca Nut and Cocoa Marketing and Processing Cooperative Ltd. Vs. State of Karnataka and Others*, ; and *The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another*, .

29. However, if the provision of law is to be read or understood or interpreted, the Court has to play an important role. Read : *P.M. Bhargava and Others Vs. University Grants Commission and Another*, and *Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another*, .

30. In the instant case, the Expert Committee was appointed by the High Court itself. No allegation of malafide or disqualification against any Member of that Committee had ever been made/raised. Thus, we fail to understand as on what basis, its recommendation on the issue involved herein, has been brushed aside by the High Court without giving any reason whatsoever, particularly, when the

Act governing VMH does not prohibit the use of the part of the compound for the purpose other than connected with Queen Victoria.

31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." Vide *State of Orissa Vs. Dhaniram Luhar*, and *State of Rajasthan Vs. Sohan Lal and Others*, .

32. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Vide *Raj Kishore Jha Vs. State of Bihar and Others*, ; *Vishnu Dev Sharma Vs. State of U.P. and Others*, ; *Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I Circle and Others*, ; *State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi*, ; *U.P.S.R.T.C. Vs. Jagdish Prasad Gupta*, ; *Ram Phal Vs. The State of Haryana and Others*, ; *Mohammed Yusuf Vs. Faij Mohammad and Others*, ; and *State of Himachal Pradesh Vs. Sh. Sada Ram and Another*, .

33. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected.

34. Indisputably, the High Court did not assign valid and good reasons for rejecting the recommendation made by the Expert Committee for allowing the construction in question in its judgment and order dated 28.09.2007 nor the reasons have been recorded in the impugned judgment dated 21.08.2009 rejecting the application for modification of the earlier order. Thus, in view of the above, the orders, so far as this particular issue is concerned, remain unsustainable.

35. Thus, in view of the above, special facts and circumstances of the case warrant review of the impugned order. The appeal stands allowed. The impugned judgment and order dated 21.8.2009 is set aside. Application filed by the appellant for modification of the order dated 28.9.2007 stands allowed.

However, it is clarified that in case the proposed construction is raised it would be

in consonance with the existing ambience and compatible with the architecture of the monument. The appellant shall ensure that landscape of the monument would also not be disturbed by any means.

The parties are left to bear their own costs.