

(2004) 09 AHC CK 0114
In the Allahabad High Court
Case No : C.M.W.P. No. 35782 of 2004

Veekay Connectors (P) Ltd. and Another	APPELLANT
Vs	
National Small Industries Corporation Ltd. and Others	RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 299

Citation : AIR 2005 All 57 : (2005) 5 AWC 4471

Hon'ble Judges : M. Katju, Acting C.J.; Sunil Ambwani, J

Bench : Division Bench

Advocate : S.P. Gupta and Yashwant Verma, for the Appellant; B.N. Singh and C.S. Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri S. P. Gupta, learned Senior counsel and Shri Yeshwant Verma for the petitioner and Sri Chandra Shekhar Singh, learned counsel for respondent Nos. 1 and 3 and Sri B. N. Singh, learned counsel for respondent Nos. 2, 4, 5 and 6.
2. The petitioner has challenged the impugned orders dated 25-3-2004 (Annexure 9 to the petition) and 30-6-2004 (Annexure-14 to the petition).
3. Since we are deciding the case on a purely legal point in our opinion it is not necessary for us to call for counter affidavit. We have heard learned counsel for the respondents.
4. The petitioner is a private limited company registered under the Indian Companies Act, and is primarily engaged in the manufacture of Fibre Optic Communication Accessories.
5. On 13-3-2002 the Bharat Sanchar Nigam Limited respondent No. 2 (hereinafter called B.S.N.L.) floated a global tender for the supply of Fibre Distribution Management System (FDMS). True copy of the tender notice dated 13-3-2002 is Annexure-1 to the writ petition.

6. Under the terms of the tender notice the supply of manufactured items was to be made as per the specifications given by the Technical Communication Engineering Centre (TEC) established by the department of Telecom, Government of India. The further requirement was that the bidders had to obtain a Type Approval Certificate in pursuant to the aforesaid tender notice. The petitioner submitted its bid and the tender was opened by the B.S.N.L. on 30-7-2002.

7. The petitioner's bid was accepted and a purchase order was issued on 8-5-2003, and it executed the contract. On the basis of that contract further order has to be placed. It is alleged that, due to certain lobby against the petitioner the impugned orders have been passed.

8. We have carefully perused the impugned orders dated 25-3-2004 and 30-6-2004, and we are of the opinion that the impugned orders are illegal and are liable to be set aside on the short point that they do not contain reasons.

9. The impugned order dated 25-3-2004 states :

"Dear Sir,

With reference to the above captioned registration certificate, we have received several letters of complaint informing us of fraud and forgery committed by you : from B.S.N.L., Lucknow, Jaipur and Bhopal and also manipulation in the contents of the said certificate and thereby preparation of forged documents with the intent to gain undue advantage. Your permanent registration certificate as stated above stands cancelled and M/s. Veekay Connectors (P) Ltd. is blacklisted for a period of three years with immediate effect. The original certificate under Single Point Registration Certificate must be returned to this officer immediately. Further use of the aforesaid certificate is strictly prohibited and use of it in any manner whatsoever will be dealt as per law."

10. A perusal of the impugned orders dated 25-3-2004 shows that it refers to certain complaint of fraud and forgery alleged to be committed by the petitioner, and manipulation in the contents of the certificate and preparation of forged documents with the Intent to gain undue advantage. It is only an allegation but not the reasons. In the second paragraph of the said letter dated 25-3-2004 it is stated that the petitioner's permanent registration certificate stands cancelled and it is blacklisted for three years. Thus the impugned order certainly has civil consequences.

11. The petitioner has stated in paragraphs 44 to 47 of the petition that it was not given opportunity of hearing before passing the impugned order dated 25-3-2004. Since we have not called for counter affidavit we are not giving a decision on the point whether opportunity of hearing was given to the petitioner before passing the impugned order dated 25-3-2004. However, even assuming that opportunity of hearing was given yet the order dated 25-3-2004 is illegal because it does not contain reasons. It is well settled that before passing an

order which has civil consequences not only opportunity of hearing must be given to the party but there must be reasons in the impugned order also.

12. In the Constitution Bench decision of the Supreme Court in S.N. Mukherjee Vs. Union of India, It was observed (Paras 34 and 35) ;

"The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision is that such a decision is subject to the appellate jurisdiction of this Court under Article 13G of the Constitution as well is the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power, But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at filings objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally look at things from the stand point of policy and expediency. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other consideration referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. The same purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions Irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that It is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, If it affirms such an order, need not give separate reasons If the appellate or revisional authority agrees with the reasons contained in the order under challenge."

13. The above view has been followed in series of decisions of the Supreme Court and of this Court subsequently, the latest one being *State of Orissa Vs. Dhaniram Luhar*, wherein the Supreme Court observed (Paras 7 and 8 of AIR) :

"Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See *Raj Kishore Jha Vs. State of Bihar and Others*,). Even in respect of administrative orders Lord Denning. M. R. In *Breen v. Amalgamated Engg-Union*. (1971) 1 All E.R 1148 : (1971) 2 QB 175 : (1971) 2 WLU 742 (CA) observed : "The giving of reasons is one of the fundamentals of good administration." in *Alexander Machinery (Dudley) Ltd. v. Ciabtree* 1974 ICK 1 20 (NIRC) 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 division. 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."

14. Tested in the light of the aforesaid decisions of the Supreme Court both the impugned orders dated 25-3-2004 and 30-6-2004 are illegal as they do not contain reasons.

15. The order dated 30-6-2004 states :

"Kindly refer to the above cited letters. In this regard, the clarification provided by you against letter ref. 2 is not satisfactory and does not substantiate the cause".

16. In view of the above, following BPCs are hereby withdrawn and shall be treated as cancelled :

SI. Product BPC No. name No. 1. FDMS (Ribbon type O.F. CGMQA/QE / CO/936/ Cables) N/1/25 dated 14-1-2001 2. FDMS (Non Ribbon Type CGMQA/QE/CO/936 O.F. Cables) N/1/2-1 Dated 14-1-2001

17. Learned counsel for the respondents submitted that he would like to place some material which would give reasons for passing the impugned order.

18. It is well settled that the impugned order cannot be supplemented by additional material either in the form of the affidavit or otherwise vide *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, ; *State Govt. Houseless Harijan Employers Association v. State of*

Karnataka (2001) 1 SCC 610 (para 49) : AIR 2001 SC 437. Para 48); Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, ; Union of India (UOI) and Another Vs. G.T.C. Industries Limited., Bombay, "

19. For the reasons given above this petition is allowed. Impugned orders dated 25-3-2004 and 30-6-2004 are quashed. However, it is open to the authority concerned to pass fresh orders offer giving opportunity of hearing to the petitioner (if opportunity was not already given) and dealing with the objections raised by the petitioner In the proposed order. No order as to costs.