Cyril Lasrado (Dead) By Lrs. And Ors vs Juliana Maria Lasrado And Anr on 12 August, 2004

Equivalent citations: AIR 2005 SUPREME COURT 1367, 2004 AIR SCW 7204, 2005 AIR - KANT. H. C. R. 954, 2004 (2) ALL CJ 2156, 2004 (7) SRJ 430, (2004) 6 JT 370 (SC), 2004 (6) JT 370, 2004 ALL CJ 2 2156, 2004 (6) ANDHLT 58, 2004 (6) SCALE 607, 2004 (7) SCC 431, (2004) 22 ALLINDCAS 571 (SC), 2004 (21) INDLD 384, 2004 (5) SLT 118, (2004) ILR (KANT) (4) 4822, (2004) 57 ALL LR 116, (2005) 2 KANT LJ 375, (2005) 1 ANDHLD 29, (2004) 6 SUPREME 156, (2004) 3 RECCIVR 782, (2004) 2 UC 1132

Author: Arijit Pasayat

Bench: Arijit Pasayat, C.K. Thakker

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           CASE NO.:
Appeal (civil)  5220 of 2004

PETITIONER:
Cyril Lasrado (dead) by Lrs. and Ors.

RESPONDENT:
Juliana Maria Lasrado and Anr.

DATE OF JUDGMENT: 12/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
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J U D G M E N T (Arising out of SLP) No. 21831/2002) ARIJIT PASAYAT, J Leave granted.

Judgment passed by a Division Bench of the Karnataka High Court affirming the order passed by a learned Single Judge is the subject matter of challenge in this appeal.

Factual aspects need to be noted in some detail.

The Land Tribunal, Mangalore, Taluk Mangalore (in short the 'Tribunal') by order dated 19.10.1978 accepted the prayer of one Cyril Lasrado (applicant before it) wherein he had prayed for recording his name as occupant of the concerned land. The applicant was the predecessor-in- interest of the present appellants. By the said order, the Tribunal directed registration of Cyril Lasrado as the occupant of the land mentioned in the order in terms of Section 48-A of the Karnataka Land Reforms Act, 1961 (in short the 'Act'). Since certain reliefs which were prayed for had not been

granted, Cyril Lasrado filed a Writ Petition No. 29259 of 1992 before the Karnataka High Court. Respondent who was the General Power of Attorney holder and the respondent no. 2 filed an application to be impleaded in the writ petition which was rejected. Suit bearing No.OS. 499 of 1994 was filed by the appellants alleging encroachment by the respondents. The suit was decreed on 30.11.1995. The power of attorney holder and one of the respondents were the parties of the aforesaid suit. Cyril Lasrado died in the meantime. A writ petition was filed by the present respondents questioning correctness of the Tribunal's order dated 19.10.1978. The same was filed against Cyril Lasrado though he had died long before. The writ petition was disposed of by a learned Single Judge by a very strange order. Though the State of Karnataka and its officials brought to the notice of the learned Single Judge that Cyril Lasrado had expired, the learned Judge was of the view that there was no necessity to bring his legal representatives on record. This was so felt as the learned Judge was of the view that the matter was to be remitted to the Tribunal and no prejudice would be caused to the legal representatives. Accordingly, the matter was remitted to the Tribunal for fresh adjudication. The order of the learned Single Judge was challenged by the appellants before the Division Bench by filing a Writ Appeal which by the impugned judgment was dismissed. The Division Bench only noted the arguments of the parties and observed as follows:

> "We have heard the learned counsel for the parties as well as learned Govt. Advocate and perused the materials placed on record.
>
> On consideration, we find no error or illegality in the order of the learned Single Judge so as to call for any interference. However, the Tribunal shall hear the aggrieved parties after giving them opportunity and pass appropriate orders in accordance with law.
>
> Writ Appeal is disposed of accordingly."

It has to be noted that the present appellants brought to the notice of the Division Bench that there had been delay of 138 days in filing the Writ Appeal as they were not aware of filing the writ petition and its disposal and when they came to know about it they applied for certified copy and after obtaining the same, filed the writ appeal. On merits also it was submitted that after a long lapse of about 19 years the writ petition had been filed against a dead person and even without issuance of notice the writ petition was disposed of.

The stand of the respondents was that the delay was not properly explained. In any event, there was no prejudice caused by non-issuance of notice. In essence order of learned Single Judge was supported.

In support of the appeal, learned counsel for the appellants submitted that this case shows non application of mind by the learned Single Judge as well as the Division Bench. Without even issuing notice to the legal representatives the matter was disposed of on a clearly erroneous ground that no prejudice would be caused if the matter is remanded back, over looking to the fact that the writ petition was filed after about 19 years without offering any explanation for the long delay. It is an accepted fact and is evident from the order of learned Single Judge itself that the State of Karnataka

and its functionaries had clearly brought on record the fact that the original applicant Cyril Lasrado had died. It is not understood as to how and on what basis, learned Single Judge concluded that no prejudice would be caused to the legal representatives. The Division Bench did not even advert to the question as to how substantial justice has been done and why no interference was called for. The approach of the learned Single Judge and the Division Bench clearly does not stand to reason. No reason has been indicated by the Division Bench.

Apparently, overlooking the fact that the writ petition was filed after about 19 years of the disposal of the matter by the Tribunal, the learned Single Judge disposed of the matter even without issuance of notice to the legal representatives. The writ petition was filed after about two decades. That prima facie made learned Single Judge's order vulnerable. The Division Bench without indicating any reason as to how the conclusions of learned Single Judge were in order dismissed the Writ Appeal.

Learned counsel for the respondents submitted that substantive justice has been done. The Tribunal's order is prima facie illegal and, therefore, learned Single Judge felt it desirable to remit the matter to the Tribunal. Even the Division Bench has directed that the aggrieved parties shall be given opportunity of being heard and, therefore, there is no violation of the principles of natural justice.

The order of learned Single Judge and impugned judgment of the Division Bench show clearly non-application of mind. The latter is practically non-reasoned. The basic issue raised by the appellants was the unexplained delay in filing the writ application. Neither Single Judge considered that aspect before disposal of the writ petition without issuance of the notice to the present appellants. Though specifically urged and argued, the Division Bench has not dealt with it and has not recorded any conclusion on that issue and no reason has been indicated.

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 indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) 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 a sphinx" is ordinarily incongruous with a judicial or quasi-judicial

performance.

Learned counsel for the respondents in the present appeal submitted that there were several factors on merits which could not be highlighted before the learned Single Judge as he chose not to deal with the matter on merits but directed the matter to be remanded to the Tribunal. In these circumstances, we feel that it would be appropriate if the matter is remitted back to the learned Single Judge for a decision afresh on merits. It would be open to the parties to place materials in support of their respective stands. The learned Single Judge, it goes without saying has to dispose of the matter after taking into account the various materials and evidence already on record or to be brought by the parties on record. The order of learned Single Judge and the impugned judgment of the Division Bench in Writ Appeal are accordingly set aside. The appeal is allowed to the extent indicated with no order as to costs.