U.O.I. And Ors vs Jai Prakash Singh And Anr on 8 March, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1363, 2007 (10) SCC 712, 2007 AIR SCW 1692, 2007 (3) ALL LJ 252, (2007) 2 WLC(SC)CVL 713, (2007) 3 ALLMR 392 (SC), (2007) 52 ALLINDCAS 126 (SC), 2007 (52) ALLINDCAS 126, 2007 (4) SCALE 299, 2007 (3) ALL MR 392, (2007) 2 JLJR 150, (2007) 2 ALL WC 1604, (2007) 4 SCALE 299, (2007) 67 ALL LR 504, (2007) 2 PAT LJR 166

Author: Arijit Pasayat

Bench: Arijit Pasayat, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (civil)  5687 of 2000

PETITIONER:
U.O.I. and Ors.

RESPONDENT:
Jai Prakash Singh and Anr.

DATE OF JUDGMENT: 08/03/2007

BENCH:
Dr. Arijit Pasayat & Lokeshwar Singh Panta

JUDGMENT:
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JUDGMENT DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court allowing the writ petition filed by respondent no.1.

2. A brief reference to the factual position would suffice:

3. Respondent no.1 filed a writ petition before the Allahabad High Court alleging that he was not granted permission to operate Gramin PCO and his prayer was that he should have been granted such permission. Appellants who were the respondents 1 to 4 in the writ petition took the stand that according to the guidelines of the Ministry of Communication one Gramin PCOI (described in the guidelines as Village Public Telephone, in short the 'VPT') already existing in the concerned village and, therefore, the prayer of the writ petitioner could not be accepted in view of the guidelines. The High Court by a cryptic non-reasoned order held that the conditions in the guidelines "appear to be arbitrary" and hence violative of Article 14 of the Constitution of India, 1950 (in short the Constitution). Accordingly direction was granted to allot a VPT to the writ petitioner within the stipulated time.

4. Appellants have challenged the order on the ground that no reason has been indicated as to why the guidelines were found to be illegal/arbitrary under the national Communication Policy, 1994; Department of Telecommunication is providing VPT. One VPT is provided in a Revenue village. There are nearly 60,77,491 village in the country. By 31.3.1999, therefore, 3,40,640 villages, which, have been provided with VPT's and remaining villages were to be provided VPT's progressively by March, 2002 . In UP (Eastern) Telecom Circle, there are nearly 75,698 villages, out of which 29,970 villages have been provided with VPT's and rest about 45,000 villages were to be provided with VPT's. It is pointed out that after all the villages are provided with public telephones, additional PCOs can be provided depending upon technical feasibility and demand. The difference between VPT and PCO is that the call charges made from a VPT are less than those from PCO. Also the commission to the operative custodian of a VPT is higher that that payable to a PCO operator custodian. The commission is percentage of revenue depending on the call charges. It was also submitted that the department did not have adequate resources to provide more than one VPT in a village under the VPT programme. However, wherever technically feasible, second and subsequent public telephone can be provided which shall be at the cost of the applicant. Without indicating any reason as to how the guidelines were arbitrary, the High Court has issued the directions.

5. There is no appearance on behalf of the respondent no. 1 who was the writ petitioner.

6. We find that 1994 guidelines have been amended from tie to time and clarifications have been issued subsequently on 8.12.1998 and 9.3.1999. it appears that for installation of VPT, define role assigned to the Gram Panchayat. The guidelines of 8.12.1988 stipulate that the Gram Panchayat will recommend only one VPT in a village and the question of multiple cases does not arise. In case of any dispute, the case is to be discussed with Panchayats and resolves. The recommendations for extension/location are to be given by the Panchayat or the BDO as the case may be.

7. As rightly submitted by learned counsel for the appellants, without indicating any reason, the High Court has described the policy to be arbitrary. Interestingly, the writ petitioner had not challenged the legality of the policy. In fact, he was claiming benefit under the policy. Unfortunately, the High Court travelled beyond the pleadings. It did not grant any opportunity to the present appellant to file even counter affidavit and by a non-reasoned order struck down the policy. The order of the High Court has been stayed by this Court on 1.9.1999.

8. 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.

9. 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.

10. The inevitable conclusion is that the impugned order of the High Court is unsustainable and is set aside. The appeal is allowed. No costs.