

State Of U.P. Thru Prin.Secy.Tax & ... vs Satyendra Singh And Another on 30 July, 2018

Bench: Anil Kumar, Rekha Dikshit

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Court No. - 7

Case :- SERVICE BENCH No. - 6850 of 2016

Petitioner :- State Of U.P. Thru Prin.Secy.Tax & Registration Deptt.& Ors.

Respondent :- Satyendra Singh And Another

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C.,Ajey Shanker Tewari

Hon'ble Anil Kumar,J.

Hon'ble Mrs. Rekha Dikshit,J.

Heard Shri Vivek Kumar Shukla, learned Additional Chief Standing Counsel for the petitioners and Shri Ajey Shanker Tewari, learned counsel for the respondent no.1.

By means of the present writ petition, the petitioners have challenged judgment and order dated 05.06.2015 passed by the State Public Services Tribunal, Indira Bhawan, Lucknow (in short "the Tribunal") in Claim Petition No.1931 of 2014 (Satyendra Singh v. State of U.P. and Others).

Facts in brief of the present case as submitted by learned State counsel for the petitioners are that the respondent no.1/claimant filed Claim Petition No.1931 of 2014 before the Tribunal stating therein that the respondent no.1 was posted as Assistant Commissioner, Commercial Tax, Khand-13,

Ghaziabad.

At the time of posting of respondent no.1 at Aligarh as Assistant Commissioner, Mobile Squad, II-Unit, Commercial Tax, Aligarh Zone, an incident took place in respect to which a charge sheet dated 05.03.2012 has been issued to him by which five charges were levelled against him.

On 06.08.2012, the respondent no.1/claimant submitted his reply to the charge sheet. On 29.11.2012, after conducting enquiry, Inquiry Officer submitted his report.

On the basis of the inquiry report, the Principal Secretary, Tax Registration Department, U.P., Lucknow/Punishing Authority issued a show cause notice along with inquiry report to the respondent no.1, submitted his reply.

After considering his reply, the Punishing Authority passed the punishment order dated 05.11.2014 awarding punishment of censure entry as well as stoppage of two increments with cumulative effect.

The punishment order dated 05.11.2014 passed by the Punishing Authority challenged by the respondent no.1 before the Tribunal by filing Claim Petition No.1931 of 2014. After exchange of pleadings the Tribunal allowed the same by impugned order dated 05.06.2015, quashed punishment order dated 05.11.2014 with a direction that the claimant will be entitled to all consequential benefits.

Shri Vivek Kumar Shukla, learned Additional Chief Standing Counsel for the petitioners submits that the Tribunal has allowed the claim petition with the following finding:

"While going through the record available on the file it becomes clear that the Inquiry Officer proved the charges against the petitioner merely on the basis of conclusion of the verification report prepared under Deputy Collector and the Additional Commissioner, Grade-I Commercial Tax, Agra Zone, Agra. The delinquent officer was not involved in the inquiry. The petitioner submitted detailed explanation to the show cause notice but when we go through the punishment order and the explanation submitted by the petitioner against the show cause notice we find that proper analysis and deliberation was not done by the opp. Parties to assess the role of the petitioner in the episode.

The finding recorded by the Inquiry officer on the relevant charges can be safely termed as irrational. No reasons have been given for recording those findings. The Inquiry Officer has recorded cryptic findings and concluded that the charges are proved without rationalizing those conclusions. Hence, it is a fit case where the Tribunal should interfere."

The said finding given by the Tribunal while setting aside the impugned order of punishment is contrary to the material on record as the inquiry proceeding had been conducted as per principles of natural justice, thereafter a show cause notice was issued to the respondent no.1 to which he

submitted his reply and after considering his reply, the Punishing Authority has passed impugned order dated 05.11.2014.

It is further submitted by him that from perusal of the punishment order, it is clearly established that the Punishing Authority in the said order mentioned all the charges, reply given by the respondent no.1 and the conclusion of Inquiry Officer on the said charge as per the enquiry report and thereafter discussed each and every charges and gave its own finding, so the finding given by the Tribunal that the Punishing Authority has not considered the explanation of the respondent no.1 against the show cause notice and no proper analysis and deliberation was done by him while passing impugned order dated 05.11.2014 is totally incorrect and wrong rather contrary to material on record of the order passed by the Punishing Authority is a speaking order, so the order passed by the Tribunal is liable to be set aside.

Shri Ajey Shanker Tewari, learned counsel for the respondent no.1/claimant submits that in the present case the reply which is submitted by the respondent no.1 to the charge sheet and show cause notice has not been considered by the Punishing Authority while passing the order dated 05.11.2014 rather in a very stretchy manner and by way of non speaking order, he has awarded the punishment to the respondent no.1/claimant so the Tribunal has rightly set aside the order dated 05.11.2014 by order dated 05.06.2015.

Shri Ajey Shanker Tewari, learned counsel for the respondent no.1/claimant further submits that in the present case on 28.03.2012 the Additional Commissioner Trade Tax, U.P., Lucknow issued a memo to the Additional Commissioner Grade-I, Trade Tax, Aligarh Zone to hold the inquiry for irregularity committed in the re-verification/revaluation in the episode involving the petitioner. The Additional Commissioner, Grade-I, Aligarh Zone, Aligarh on 20.10.2012 submitted his report to the Commissioner, Commercial Tax, U.P., Lucknow concluding that all three Deputy Commissioners are guilty in this activity, but no action has been taken against them only the respondent no.1/claimant, who was working under them as Assistant Commissioner, has been awarded punishment, as such, the impugned punishment is arbitrary in nature, so the action on the part of the Additional Commissioner Trade Tax, U.P., Lucknow as well as Additional Commissioner Grade-I, Trade Tax, Aligarh Zone is mala fide action on the said ground, so impugned order dated 05.11.2014 has rightly set aside by Tribunal, as such, present writ petition lacks merit, liable to be dismissed.

We have heard learned counsel for the parties and gone through the record.

The first point to be considered is that what is the meaning of "speaking order" and in what manner impugned order is to be passed.

A "speaking order" means an order speaking for itself. To put it simply, every order must contain reasons in support of it.

Giving of reasons in support of an order is considered to be the third principle of natural justice. According to this, a party has a right to know not only the result of the enquiry but also the reasons

in support of the decision.

If the statute requires recording of reasons, then it is the statutory requirement and, therefore, there is no scope for further enquiry. But even when the statute does not impose such an obligation, it is necessary for the quasi-judicial authority to record reasons, as it is the only visible safeguard against possible injustice and arbitrariness and affords protection to the person adversely affected. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision, whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.

Reasons behind giving speaking order is that if the order passed by the adjudicating authority is subject to appeal or revision, the appellate or revisional court will not be in a position to understand what weighed with the authority and whether the grounds on which the order was passed were relevant, existent and correct and the exercise of the right of appeal would be futile. In CIT v. Walchand Co. (P) Ltd. AIR 1967 SC 1435, Hon'ble the Apex Court observed, "The practice of recording a decision without reasons in support cannot but be deprecated."

In S. N. Mukherjee v. Union of India (1990) 4 SCC 594, the Hon'ble Apex Court observed that except in cases where the requirement of recording reasons has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions must record reasons in support of their decisions.

No particular form of recording of reasons is necessary. It is enough if the adjudicating authority records reasons which are proper, relevant, germane, intelligible and deals with arguments advanced, points raised and conclusions recorded in support of the order or action taken.

In R. v. Deputy Industrial Injuries Commissioner ex parte Moore (1965) 1 QB 456, Diplock J held as under:

"The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but that he must take into account any material which, as a matter of reason, has some probative value?. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue: The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his."

Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of a sound system of judicial review. Reasoned decision is not only for the purpose of showing the citizen receiving justice, but also a valid discipline for the tribunal/authority itself. Hence, statement of reasons is one of the essentials of justice.

In nutshell, behind recording of reasons,

(a) the party aggrieved has the opportunity to demonstrate before the appellate or revisional court that the reasons which persuaded the authority to reject his case were erroneous;

(b) the obligation to record reasons operates as a deterrent against possible arbitrary action by executive authority invested with judicial power;

(c) it gives satisfaction to the party against whom the order is made.

In the view of the above position in respect to the speaking order, we have examined the order of punishment dated 05.11.2014 passed by the Principal Secretary, Tax Registration Department, U.P., Lucknow/Punishing Authority.

And from perusal of the said order, we find that while passing order dated 05.11.2014, the Punishing Authority has first stated the charges thereafter explanation given by the respondent no.1, finding given by the Inquiry Officer, thereafter he has discussed each and every charges and considering the material on record as well as reply submitted by the respondent no.1 and has given its own finding on each charges separately. Hence, it cannot be said that the order passed by the Punishing Authority is non speaking order rather the same is reasoned one and well discussed, so keeping in view the said fact the finding given by the Tribunal while passing the impugned order dated 05.06.2015 that the order of punishment dated 05.11.2014 is a non speaking order episode is totally incorrect.

So far as the argument raised by Shri Ajey Shanker Tewari, learned counsel appearing for the respondent no.1/claimant that in respect to malice against the Additional Commissioner, Trade Tax, U.P., Lucknow, who has issued the memo dated 28.03.2012 to the Additional Commissioner, Grade-I, Trade Tax, Aligarh Zone to hold the inquiry for irregularity committed in the re-verification/revaluation in the episode in which the respondent no.1/claimant was involved and he has been awarded punishment, a query has been put to him whether the said officers were not made as party by name, so taking into consideration the argument as raised by Shri Shri Ajey Shanker Tewari, learned counsel for the respondent no.1/claimant that the order dated 05.11.2014 is liable to be set aside on the ground of malice is concerned, has got no force because if any allegation is made against a person, he should be made a party because mala fide exercise of power means use of power for a purpose other than that of which the power is conferred upon the authority. Same will be the case when the order is for a purpose other than which finds in the order itself. This ulterior or alien purpose clearly speaks of misuse of power and suggests bad faith.

Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown* 1904 AC 515, has stressed the need of bona fide use of power by the administrative authority and it is held that there is a condition implied in this as well as in other instruments which create powers, namely that the powers shall be used bona fide for the purpose for which they are conferred. That an act done in bad faith vitiates the act has also been indicated by *Warraington, CJ. In State v. Pool Construction* 1926 Ch 66. as follows:-

"No public body can be regarded as having statutory authority to act in bad faith or corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative."

Malice or mala fide is of two types:- (1) express malice or "malice in fact"; and (2) implied or legal malice or "malice in law". Mala fides violating proceedings may be factual or legal.

Malice in fact means when an action is taken out of personal ill-will, enmity, animosity, vengeance or spite, it can be described as "malice in fact", as there is personal mala fide.

Malice in law means when an action is taken or power is exercised without just or reasonable cause or for a purpose foreign to the statute it can be said that there is legal mala fide or "malice in law".

The former is actuated by extraneous considerations whereas the latter arises where a public authority acts deliberately in defiance of law, may be without malicious intention or improper motive (*Somesh Tiwari v. Union of India* (2009) 2 SCC 592).

The State is under obligation to act fairly without ill will or malice- in facts or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object mala fide exercise of power does not imply any moral turpitude, exercise of statutory power for purposes foreign to those for which it is in law intended. (*Vide Jaichand Lal Sethia vs. the State of West Bengal & Ors. AIR 1967 SC 483; A.D.M. Jabalpur vs. Shiv Kant Shukla, AIR 1976 SC 1207; State of A.P. vs. Goverdhanlal Pitti, AIR 2003 SC 1941*).

Further, the person against whom personal mala fides or 'malice in fact' and 'malice in law' is imputed should be impleaded as a party respondent to the proceedings and he should be afforded opportunity to meet with those allegations. In his absence, no enquiry into the correctness or otherwise of the allegations can be made. The reason is very simple. The principles of natural justice require that no person should be condemned unheard. Now if allegations have been made against a person who is not made party to the proceedings and the court proceeds on the basis of those allegations, the person against whom such allegations have been levelled is condemned unheard.

In the case of State of Bihar vs. P. P. Sharma AIR 1991 SC 1260, Hon'ble the Supreme Court held as under:-

"It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo-nominee as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. (All India State Bank Officers' Federation v. Union of India (1997) 9 SCC 151 and I. K. Mishra v. Union of India, (1997) 6 SCC 228.)"

In federation of Rly. Officers Association vs. Union of India & Ors., AIR 2003 SC 1344, the Apex Court has held that the allegation of mala fide has to be specifically made and the person against whom such allegations are made has to be impleaded and in his absence such allegations cannot be taken into consideration.

It is also the settled legal proposition that in case allegations of mala fide are made against any person he is to be impleaded by name, otherwise the allegations so made cannot be considered. (Vide State of Bihar and Anr. Vs. P.P.Sharma, I.A.S. & Anr., AIR 1991 SC 1260; DR. J. N. Banavalikar Vs. Municipal Corporation of Delhi & Anr., 1995 Supp. (4) SCC 89; All India State Bank Officers' Federation & Ors. vs. Union of India & Ors., (1997) 9 SCC 151; I.K. Mishra vs. Union of India and others, AIR 1997 SC 3740; and Rantagiri Gas and Power Private Limited Vs. RDS Projects Limited and others (2013) 1 SCC 525).

However, the Tribunal while passing the impugned order dated 05.06.2015 has not considered the said facts that the person against whom mala fide as alleged is not made as a party and upheld the respondent no.1 that the order dated 05.11.2014 is mala fide.

For the foregoing reasons, we allow the writ petition and set aside the judgment and order dated 05.06.2015 passed by the State Public Services Tribunal, Indira Bhawan, Lucknow in Claim Petition No.1931 of 2014 (Satyendra Singh v. State of U.P. and Others) and restore the punishment order dated 05.11.2014 passed by the Principal Secretary, Tax Registration Department, U.P., Lucknow/Punishing Authority.

No order as to costs.

Order Date :- 30.7.2018 Anupam S/-

(Rekha Dikshit,J.) (Anil Kumar,J.)

