

S.Dhilip Kumar Vs. Director of Town and Country Planning

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Court : Chennai

Decided On : Jun-17-2014

Judge : B.Rajendran

Appellant : S.Dhilip Kumar

Respondent : Director of Town and Country Planning

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

17. 06.2014 Coram The Honourable Mr.Justice B.RAJENDRAN W.P. No.15441 of 2014 and M.P.No.1 of 2014 S.Dhilip Kumar Trustee Sri Balaji Charitable Educational Trust 'Temple Towers' III Floor, New No.76 North Mada Street Mylapore Chennai-600 004. ...Petitioner Vs. 1.The Director of Town and Country Planning 807, Anna Salai Chennai-600 002. 2.The Member Secretary Mamallapuram Local Planning Authority 13, Dr.Varadharasanar Street Vedachalam Nagar Chenglepet-603 001. ...Respondents Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the respondents culminating in the impugned order dated 14.03.2014 bearing Reference e/f/ No.1362/2014rpgp, passed by the 1st respondent, quash the same. For Petitioner : Mr.M.Sundar for Mr.K.Ashok Kumar For Respondents : Mr.N.Sakthivel Government Advocate

ORDER

The Writ Petition has been filed seeking to quash the impugned order, dated 14.03.2014, passed by the first respondent.

2. The petitioner is a Trustee in Sri Balaji Charitable Educational Trust (for short, BCT). According to the petitioner, earlier, BCT filed a Writ Petition in W.P.No.15827 of 2010 before this Court and this Court disposed of the Writ Petition, by order dated 30.06.2011, holding that the question of wrong classification can be cured by an appeal under Rule 10 and liberty was given to BCT to move the appellate authority. Thereafter, BCT filed a statutory appeal, in respect of payment of infrastructure and amenities charges, before the first respondent on 29.09.2011. The first respondent did not send any notice of enquiry/hearing to the BCT. The first respondent, without giving an opportunity of personal hearing to BCT and without holding enquiry, has disposed of the statutory appeal by order dated 14.03.2014. Challenging the same, the petitioner is before this Court with this Writ Petition.

3. The main ground of attack made by the learned counsel for the petitioner is that the first respondent, without giving an opportunity of personal hearing to BCT and without holding enquiry, has disposed of the statutory appeal filed under Rule 10 Section 76, by order dated 14.03.2014. He would further submit that apart from filing the appeal, the petitioner has sent three reminders and particularly, in the letter dated 30.01.2014, as no orders have been passed from 2011 in the statutory appeal, the petitioner has specifically requested that he may be given an opportunity of personal hearing so that he can establish his case as to whether he is liable to pay amount as per G.O.Ms.No.84 or as per the new G.O.Ms.No.161. He would further add that inspite of the letter being received by the first respondent, the impugned order is passed straightaway without affording an opportunity of personal hearing to the petitioner, that too without assigning any reasons. He would further add that the impugned order is a cryptic order and it violates the principles of natural justice, as it has been passed without assigning any reasonings. To substantiate his contention that the impugned order should give reasons, so as to make aware on what ground it has been rejected, he would rely on the judgments of the Hon'ble Supreme Court reported in [2008]. 16 VST181(SC), Steel Authority of India Limited vs. Sales Tax Officer, Rourkela-I

Circle and others; (2008) 14 Supreme Court Cases 151, Sahara India (Firm), Lucknow vs. Commissioner of Income Tax; and also the decision of this Court in W.P.No.9077 of 2014 etc., dated 29.04.2014. Relying on the said decisions, the learned counsel would submit that the respondent has violated the principles of natural justice by passing a non-speaking order and therefore, he seeks to set aside the impugned order and he would only plead that the petitioner may be given an opportunity of personal hearing. 4.Mr.N.Sakthivel, learned Government Advocate, who takes notice on behalf of the respondents, would contend that what is challenged in this Writ Petition is the order passed in the statutory appeal, for which personal hearing is not mandatory. He would further add that the first respondent has passed the order in the statutory appeal by taking into consideration all the relevant facts and hence, he prays to dismiss the Writ Petition.

5. Heard both sides. By consent, the main Writ Petition itself is taken up for final disposal at the stage of admission itself.

6. It is relevant to extract the impugned order, which reads as follows:-
nkW;fhz; bghUs; bjhlh;ghd cj;nrjj;jpw;F. efh; Cuikg;g[,af;Feh; mth;fshy; 21/01/2008 md;W ,irtspf;fg;gl;Ls;sJ/ mg;bghGija Infrastructure and Amenities Charges murhiz vz;/ 84. tPl;L trjp kw;Wk; efh;g;g[w tsh;r;rpj;Jiz ehs; 08/04/2008 eilKiwapypUe;jJ/ vdnt nkW;fz;l murhizg;go mog;gil kw;Wk; cl;fl;likg;g[fl;lzk; (Infrastructure and Amenities Charges) kDjhuhuhy; tl;oa[lD; brYj;jg;gl ntz;Lbkd bjhptpf;fg;gLfpwJ/ 7. A cursory reading of the impugned order will denote that the first respondent has straightaway passed a non-speaking order. In this connection, I would like to refer to the decision of the Hon'ble Supreme Court reported in [2008]. 16 VST181(SC), Steel Authority of India Limited vs. Sales Tax Officer, Rourkela-I Circle and others, wherein, the Hon'ble Supreme Court has held as follows:- ".12. A bare reading of the order shows complete non-application of mind. As rightly pointed out by learned counsel for the appellant, this is not the way a statutory appeal is to be disposed of. Various important questions of law were raised. Unfortunately, even they were not dealt with by the first appellate authority.

13. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. (See *Raj Kishore Jha v. State of Bihar* [2003]. 11 SCC519.

14. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* [1971]. 1 All ER1148 observed: ".The giving of reasons is one of the fundamentals of good administration'. In *Alexander Machinery (Dudley) Ltd. v. Crabtree* [1974]. ICR120(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 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 the sphinx". is ordinarily incongruous with a judicial or quasi-judicial performance."

8. Similarly, it is relevant to refer to the decision of the Hon'ble Supreme Court reported in (2008) 14 Supreme Court Cases 151, *Sahara India (Firm), Lucknow vs. Commissioner of Income Tax, Central-I* and another, which was relied upon by the learned counsel for the petitioner for the proposition that the impugned order has to be passed by assigning reasons as otherwise it will violate the principles of natural justice. In the said decision, in paragraph Nos. 19 to 21, it was held as follows:- 19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good

irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle *audi alteram partem*, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See: *Union of India Vs. Col. J.N. Sinha*, ((1970) 2 SCC458.

21. In *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.* (1978) 1 SCC405 explaining as to what is meant by expression civil consequence, Krishna Iyer, J., speaking for the majority said: (SCC p.440, para 66) ".66. ...'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.". (emphasis supplied) 9. Similarly, it is also pertinent to refer to the judgment rendered by me in W.P.No.9077 of 2014, dated 29.04.2014, wherein, I have followed the decision of the Hon'ble Supreme Court reported in (2011) 13 SCC733 *Kesar Enterprises Limited vs. State of Uttar Pradesh and others*, wherein, the Supreme Court has held in paragraph Nos.24 and 29 as under:- 24. Rules of natural justice are not embodied rules. The phrase natural justice is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. 10. Following the decisions cited supra, as the impugned order dated 14.03.2014 is a non-speaking order, I am inclined to set aside the same and accordingly, the same is set aside and the Writ Petition is allowed. As what is challenged in this Writ Petition is the order passed in the

statutory appeal, the matter is remitted back to the first respondent and as a condition precedent for the respondent to enquire into the matter, the petitioner is directed to deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) within a period of three weeks from the date of receipt of a copy of this order and on such deposit being made, the first respondent is directed to give an opportunity of personal hearing to the petitioner and thereafter, he shall pass orders, on merits and in accordance with law, within a period of four months thereafter. Consequently, connected Miscellaneous Petition is closed. No costs. 17.06.2014
paa Index: Yes/No Internet: Yes/No To 1.The Director of Town and Country Planning 807, Anna Salai Chennai-600 002. 2.The Member Secretary Mamallapuram Local Planning Authority 13, Dr.Varadharasanar Street Vedachalam Nagar Chenglepet-603 001. B.RAJENDRAN,J paa W.P.No.15441 of 2014 17.06.2014

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