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Unit Trust of India Vs. Aaifr and Others

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Court : Delhi

Decided On : Jul-31-2001

Reported in : 93(2001)DLT86; 2001(59)DRJ723

Judge : Mr. Arijit Pasayat, C.J. and; D.K. Jain, J.

Acts : Constitution of India - Article 226; SICA - Sections 16(6A)

Appeal No. : CWP 1600 OF 2000

Appellant : Unit Trust of India

Respondent : Aaifr and Others

Advocate for Def. : Mr. C.S. Vaidyanathan, Sr. Adv., ; Mr. Rajiv Shakdhar, ; Ms

Advocate for Pet/Ap. : Mr. R.N. Trivedi, ASG,; Mr. P.N. Tiwari and; Mr. A.K. Mishr

Disposition : Petition allowed

Judgement :
ORDER

Arijit Pasayat, C.J.

1. Challenge in this writ petition is to the order passed by the Appellate Authority for Industrial and Financial Reconstruction New delhi, (in short AAIFR) in appeal

No. 121/99. The said appeal was directed against eh order dated 30.7.1999 in case No. 293/87 of Board of Industrial and Financial Reconstruction (in short BIFR). The main ground of challenge in the writ petition is that without indicating any basis or reason the directions of BIFR have been substituted. Learned counsel for the respondents 3 (ICICI Ltd) and 4 (Nirlon Limited), on the other hand, submitted that though the order passed by AAIFR is hot very explicit, yet the same was passed after taking into consideration all relevant aspects and while exercising jurisdiction under Article 226 of the Constitution of India 1950 (in short, the Constitution) no interference is called for. It is also stated by their counsel that after waiting for a considerable length of time, the order passed by AAIFR has been given effect to and property has been registered and ICICI is in the enjoyment of the property. By way of reply, it has been submitted by learned counsel for the petitioner that the order of AAIFR is dated 11.1.2000, the present writ petition was field on 24.2.2001, while the property has been transferred much later and no equities are available to respondents 3 and 4.

2. The order of AAIFR, which is impugned in this writ petition, in its entirety reads as follows:

'This is an appeal against BIFR's order dated 30-7-99/19.8.99 in case No. 293/87 regarding M/S Nirlon Ltd.

2. The appellant is aggrieved by paragraph 11(a) of the impugned order. We have heard at length the learned counsel for the appellant, the UTI and M/S Nirlon Ltd. To set the matter at rest, we set aside the BIFR's direction in paragraph 11(a) of the impugned order and substitute it as follows:

'The second and fourth floors of the East Wing of the Nirlon House are transferred to and vested in ICICI in terms of Section 16(6A) of SICA along with proportionate right sin land and common facilities/parking area. ICICI shall pay @ Rs. 1560/- per sq ft (the price at which the space in this building is being offered to other occupant tenants) plus rent from the date of occupation up to today (calculated at rates keeping in view the rents paid by other tenants in the building) and after adjusting the amount of Rs. 202 lakhs already paid by ICICI, without charging any interest thereon. In case of dispute about rent the parties are free to approach

BIFR for fixation of the rent.'

The appeal is allowed accordingly'.

A bare look at the order would show that tit is not reasoned. We are unable to accept the stand of learned counsel for respondent 3 and 4 that though reasons have not been indicated, yet they are inherent.

3. Duty to give reasons entails a duty to rationalize the decision. Reasons thereforee help to structure the exercise of discretion, and the necessity of explaining why a decision is reached. It requires one to address one's mind to be relevant factors, which ought to be taken into account. Further, furnishing reasons affords the affected party to know why a decision was reached. In C.B. Gautam v. Union of India, : [1993]199ITR530(SC) it was observed that 'the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers'. Reasons when given provide a glimpse of the decision-making process and assist the forum where the order is assailed to gauze transparency of the process. Reasons are harbingers between the mind of the decision-maker to the controversy in question and the decision or conclusion arrived at.

4. Giving reasons in support of a decision or action as recorded is hallmark of great administration. In Lord Denning's view, 'giving of reason is one of the fundamental of goods administration'. (See Breen v. Amalgamated Engineering Union, 1971(1) All E.R. 1148 A party appearing before the Tribunal is entitled to know as, either expressly stated by the Tribunal; or inferentially stated, what it is, to which the Tribunal is addressing its mind.

5. It is settled law that reasons are harbinger between the mind of the maker to the controversy in question and the decision or the conclusion arrived at. Natural justice demands that decision should be passed one some evidence of probative value. The object underlying rules of natural justice is to prevent miscarriage of justice and secure fair play in action. A duty to give reasons entails a duty to rationalize the decision. Reasons thereforee, help to structure the exercise of

discretion and a necessity of explaining why a decision is reached requires one to address one's mind to the relevant factors which ought to be taken into account. Secondly, furnishing reasons satisfies an important desire on the part of the affected persons to know why a decision was reached. Basic fairness requires that those in authority over others should tell them why they are subject to some liability or have been refused some benefit. Giving of reasons enables Courts and Tribunals to effectively and meaningfully exercise their respective appellate or supervisory power. The most compelling consideration, for instance, for disclosure of reasons in support of an order or decision is that the same ensures proper application of mind, reduces the possibility of casualness and minimizes qualms and caprice and thereby serves to provide legal protection to a person against arbitrary action/conduct. A major judicial concern for requiring reasons is that if decision reveals the 'inscrutable face of the Sphinx' It can by its silence render it virtually impossible for the Court to perform their appellate function or exercise of power of judicial review in agitating the validity of the decision. Whereas the statute or regulation provides a right of appeal from a decision, reasons are necessary to enable the effected person to exercise that right effectively. A right to reason in this situation is inferred by necessary implication from the provisions of appeal.

6. In Bhagat Raja v UOI AIR 1957 SC 1606, the Supreme Court held that case for giving reasons or for making a speaking order becomes much stronger when a decision can be challenged. In the words of the Supreme Court in Organo Chemical Industries vs UOI, AIR 1979 SC 1803, inscrutable face of Sphinx is ordinarily incongruous with a judicial or quasi judicial performance. In re: Poyser and Mills Arbitration 1964(2) QB 467, it was observed that a decision might be perfectly right, but the person against whom it was made, was left with the real grievance that he was not told why the decision had been made.

7. Judged on the tough stone of sustainability in the light of principles indicated above, the order passed by AAIFR is vulnerable and cannot be maintained. In the circumstances we set aside the order without examining the merits of the rival stands. AAIFR shall re-hear the matter. In order to avoid unnecessary delay the parties shall appear before the AAIFR on 3.9.2001. Effect and relevance of any

action taken by respondents 3 and 4 subsequent to the order of AAIFR shall be considered in its proper perspective by the AAIFR when it takes up the matter afresh. It goes without saying that parties shall be permitted to places their respective stands before AAIFR.

Petition is allowed to the aforesaid extent.

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