Before Ajay Kumar Mittal & Ramendra Jain, JJ.

M/S PRIME ADVERTISERS AND ANOTHER — *Petitioners*

versus

MUNICIPAL COUNCIL, KAPURTHALA AND OTHERS — *Respondents*

CWP No. 17498 of 2015

August 29, 2016

Constitution of India, 1950 — Art.226/227 — Petitioner entered into agreement to maintain various public utilities and to display advertisements thereon in Nakodar — Agreement cancelled on the ground of violation of conditions of the agreement — Order/letter cancelling agreement non-speaking, no opportunity of hearing afforded — Held, violation of principles of natural justice — Principles of natural justice discussed in detail — Order of cancellation quashed.

Held, that delving into the issue relating to the passing of the speaking order by an authority whether administrative, quasi judicial or judicial, it was laid down by the Supreme Court in ***M/s Kranti Associates Pvt. Ltd. and another*** *versus* ***Sh. Masood Ahmed Khan and others***, (2010) 9 SCC 496 as under:-

"17. The expression rs.speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).

18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

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51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of instrumentalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial power. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

(Para 5)

Further held, that the Apex Court in ***Canara Bank v. V.K. Awasthy AIR 2005 SC 2090*** while dealing with the doctrine of principles of natural justice had noticed as under:-

> "8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man.
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> Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.
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> 9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal

justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled.The first and foremost principle is what is commonly known as audialteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "evocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

(Para 6)

Rishu Mahajan, Advocate, *for the petitioners.*

Sanjeev Soni, Advocate, for respondent No.3.

AJAY KUMAR MITTAL, J. (ORAL)

(1) This writ petition under Articles 226/227 of the Constitution of India has been filed for quashing the advertisement dated 25.07.2015 (Annexure P-7) and also letter dated 24.08.2015 (Annexure P-11) issued by respondent No.3 whereby the agreement entered by the petitioners with respondent No.3, has been cancelled on the ground of violations of certain conditions of agreement.

(2) Briefly, the facts of the case as narrated in the petition may be noticed. The petitioners entered into an agreement with respondent No.3 for ten years on 18.05.2012 (Annexure P-1) for maintaining one children park, public utility at bus stand, to maintain and develop two bus shelters, mask light at three main chowks and one water tank in city Nakodar and to make advertisement on these. The respondents vide advertisement dated 25.07.2015 (Annexure P-7) issued e-tender on its website by forming cluster in respect of four towns namely, Nakodar, Noormahal, Begowal and Kapurthala. The grievance of the petitioners is that Nakodar forms part of that cluster which was allotted to the petitioners vide Annexure P-1 upto 18.05.2022.

(3) Upon notice having been issued, respondents have put in appearance.

(4) The agreement of petitioner No.1 with respondent No.3 has been cancelled vide letter dated 24.08.2015 (Annexure P-11). A perusal of the impugned letter, vide which the agreement has been cancelled, shows that it is neither speaking nor has been passed after affording an opportunity of hearing to the petitioners. According to respondent No.3 the petitioners were found violating the terms of agreement dated 18.05.2012 (Annexure P-1) and for that reason the agreement dated 18.05.2012 had been terminated. In such a situation, it

was mandatory for respondent No.3 to have issued show-cause notice and pass a speaking order cancelling the agreement. Both the essential requirements of principles of natural justice are missing in the present case.

(5) Delving into the issue relating to the passing of the speaking order by an authority whether administrative, *quasi judicial or judicial*, it was laid down by the Supreme Court in ***M/s Kranti Associates Pvt. Ltd. and another*** *versus* ***Sh. Masood Ahmed Khan and others***[1] as under:-

> "17. The expression `speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).
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> b. A quasi-judicial authority must record reasons in support of its conclusions.
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> c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
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> d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
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> e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding

[1] (2010) 9 SCC 496

extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

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requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

(6) The Apex Court in ***Canara Bank*** *versus* ***V.K. Awasthy***[2] while dealing with the doctrine of principles of natural justice had noticed as under:-

"8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

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[2] AIR 2005 SC 2090

recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "`vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, (1963) 143 ER 414, the principle was thus stated:

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11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

(7) It was not disputed by learned counsel for respondent No.3 that impugned Annexure P-11 was not a speaking order, as laid down by the Supreme Court. Further even no opportunity of hearing was provided to the petitioners before issuing Annexure P-11. It was submitted by learned counsel for respondent No.3 that Annexure P-11 be treated to have been withdrawn, however, liberty be granted to respondent No.3 to take action against the petitioners for violating the terms of the agreement dated 18.05.2012 (Annexure P-1) and pass a fresh order in accordance with law.

(8) In view of above, writ petition is disposed of by observing that Annexure P-11 is rendered inoperative and respondent No.3 is permitted to pass fresh speaking order against the petitioners after affording an opportunity of hearing to the petitioners in accordance with law.

P.S. Bajwa