Before Ajay Kumar Mittal & Amit Rawal, JJ.

GIAN KAUR — *Petitioner*

versus

STATE OF PUNJAB AND OTHERS — *Respondents*

CWP No. 16590 of 2016

August 09, 2017

Constitution of India, 1950 — Art. 226 —Natural justice — Speaking Order—Non passing of speaking order — Fatal—Order has to be set aside —Fresh orders much less speaking order to be passed — Relief granted — Petition allowed.

Held that the petitioner is 1984 riot victim and Sikh Migrant and a Red Card Holder. Petitioner sought regularization of his house under the policies of State. He approached the various authorities by making the presentations. However, the orders passed by the concerned authorities are totally non-speaking one and against the principles of natural justice. Any order which is passed by a non-speaking order is violation of natural justice.

(Para 9, 10, 11)

L.S. Sidhu, Advocate
for the petitioner.

IPS Doabia, Additional Advocate General, Punjab.

Harit Sharma, Advocate
for respondents No.3 and 4.

Parminder Singh, Advocate
for Amit Arora, Advocate
for respondent No.6.

AJAY KUMAR MITTAL, J.

(1) In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the letter dated 6.7.2016 (Annexure P-22) issued by respondent No.4 whereby the Letter of Intent (LOI) dated 10.6.2016 (Annexure P-19) issued by respondent No.3 in her favour has been ordered to be cancelled. Further, a writ of mandamus has been sought directing respondents No.2 and 3 to regularize the possession of the petitioner of House No. 2980, Ground Floor, CRPF

Colony, Dugri, Ludhiana, as per the polices (Annexures P-2 to P-9, respectively) and the judgments (Annexures P-10 and P-11, respectively) passed by this Court and not to allot the house in question to any third party/employee of GLADA/Government Agencies/ Authorities. Also a writ of certiorari has been prayed for quashing the allotment order dated 29.04.2016 (Annexures P-14) issued by respomdent No. 5.

(2) A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is a 1984 riot victim and Sikh Migrant and the Red Card dated 14.10.2009 (Annexure P-1) was issued in her favour. She was living in Greater Ludhiana Area Development Authority (GLADA) Flat No. 2980, Ground Floor, Phase I, CRPF Colony, Dugri, Ludhiana since 2011. As per the policies (Annexures P-2 to P-9, respectively) and the judgments (Annexures P-10 to P-12, respectively), the possession of the house in question of the petitioner required to be regularized. Accordingly, the petitioner moved a representation dated 2.4.2016 (Annexure P-13) to respondents No.1 to 3 for regularization of the house in question in view of the policies of the State of Punjab and the judgments passed by this Court. Further, respondent No.5 vide allotment letter dated 29.4.2016 (Annexure P-14) allotted the said dwelling unit to one Amandeep Clerk, Office of Child Development Project Officer, Urban-4, Ludhiana. The petitioner is in possession of the said house which is discernible from the photographs (Annexure P-15). Thereafter, the petitioner filed CWP-10957-2016 on 25.5.2016 (Annexure P-16) for regularization of her possession in the house in question. This Court vide order dated 28.5.2016 (Annexure P-17) disposed of the said writ petition with a direction to the petitioner to appear before respondent No.2 who was further directed to decide the representation dated 2.4.2016 moved by the petitioner within a period of four weeks. Respondent No.2 called for a report from the Tehsildar, Ludhiana regarding the possession of the petitioner over House No. 2980, Ground Floor, Phase I, CRPF Colony, Dugri, Ludhiana who vide report dated 26.7.2016 (Annexure P-18) reported that the petitioner was residing in the said house since long time. Respondent No.3 issued LOI dated 10.6.2016 (Annexure P-19) regarding the house in question in favour of the petitioner requiring her to deposit a demand draft of ` 30,000/- in favour of respondent No.4. In pursuance thereto, the petitioner deposited the demand draft of ` 30,000/- vide receipt dated 14.6.2016 (Annexure P-20). Vide letter dated 5.7.2016 (Annexure P-21), the petitioner was asked to attend the office of respondent No.2 on 7.7.2016 on which date, the petitioner went to the office of respondent

No.2 but being a holiday on account of *EID,* neither respondent No.2 nor any officer/official of respondent No.2 was present in the office. However, respondent No.4 vide letter dated 6.7.2016 (Annexure P-22) had already cancelled the LOI (Annexure P-19) issued in favour of the petitioner and made the allotment of the house in question to one Government Servant. Hence, the present writ petition.

(3) The writ petition is contested by respondents No.1 and 2 and respondent No.3 by filing their respective replies. In the reply filed by respondent No.3, it has been pleaded that the houses in CRPF Colony, Dugri, Ludhiana belonged to the State of Punjab and were not the ownership of GLADA. However, in view of the policy decisions of the State Government, the GLADA has been authorized to reguarlise the possession of the unauthorized occupants of the houses. A request dated 26.6.2016 (Annexure R-3/1) was received from the petitioner for allotment of the house in question. It was further pleaded that the petitioner was a resident of Moga and the red card was also got made by her from Moga on 14.10.2009 from the office of Deputy Commissioner, Moga. On the basis of the documents and the report of the field staff, LOI was issued to the petitioner of the house in question. One Ms. Amandeep Kaur, Junior Assistant wrote a letter to respondent No.3 that the house in question was allotted to her being a Government employee by respondent No.5 vide allotment letter dated 29.4.2016. In the said flat, one Harish Inder, who retired about 5 years ago has been living and by hatching a conspiracy wanted to get the said house allotted to the petitioner. Respondent No.2 sought a report from the Executive Engineer, Provincial Division, PWD (B&R) Branch, Ludhiana who vide report dated 23.6.2016 reported that said Harish Inder was living in the house in question. Respondent No.2 recommended for action against the said Harish Inder. Accordingly, in the meeting held with respondent No.2 on 4.7.2016, since the house was allotted to a Government employee, the LOI issued in favour of the petitioner was ordered to be cancelled vide letter dated 6.7.2016 (Annexure P-22). The other averments made in the writ petition were denied and a prayer for dismissal of the writ petition was made.

(4) Learned counsel for the petitioner submitted that respondent No.4 vide letter dated 6.7.2016 (Annexure P-22) cancelled the LOI regarding House No. 2980, CRPF Colony, Dugri, Phase-I, Urban Estate, Ludhiana issued in favour of the petitioner and allotted the said house to a Government servant without affording an opportunity of hearing as the petitioner vide Annexure P-21 was called for hearing on

07.07.2016. Letter, Annexure P-22 was issued on 6.7.2016 itself. It was also urged that the letter does not satisfy the test of being a reasoned and speaking one and was, thus, liable to be quashed. It was further submitted that the impugned letter has been issued in violation of the principles of natural justice.

(5) On the other hand, learned counsel for the respondents supported the order/letter, Annexure P-22, issued by respondent No.4 for cancelling the LOI, Annexure P-19 and allotting the house in question to a Government Servant.

(6) After hearing learned counsel for the parties, we find merit in the contentions raised by the learned counsel for the petitioner.

(7) The letter dated 6.7.2016 (Annexure P-22) issued by respondent No.4 reads thus:-

> "Regarding the aforementioned subject it is informed that L.O.I. Regarding House No. 2980, CRPF Colony, Dugri, Phase-I, Urban Estate, Ludhiana, was issued by this office in your favour. In this regard the meeting was held with Hon'ble Deputy Commissioner on 04.07.2016. As per the record submitted there, the aforesaid house has been allotted to a Government Servant. As such, L.O.I. pertaining to House No. 2980, CRPF Colony, Dugri, Phase-I, Urban Estate, Ludhiana, issued vide this office letter No. 2944, dated 10.06.2016, is hereby cancelled."

(8) A perusal of the above letter/order shows that it is not a speaking order which has been passed after affording an opportunity of hearing to the petitioner. Vide Annexure P-21, the petitioner was called for hearing on 07.07.2016 whereas impugned letter, Annexure P-22 was issued on 06.07.2017 itself. Further, it was noticed that a meeting was held with the Deputy Commissioner, Ludhiana on 4.7.2016 regarding LOI of House No. 2980, CRPF Colony, Dugri, Phase-I, Urban Estate, Ludhiana and the said house has been allotted to a Government Servant and the LOI issued in favour of the petitioner stands cancelled. Once the respondents were cancelling the LOI of the petitioner and making allotment of the house in question to a Government Servant, the same required to be specifically dealt with by respondent No.3 by passing a speaking order after affording an opportunity of hearing to the petitioner.

(9) 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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> 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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> 19 to 50 XX XX XX
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> 51.Summarizing the above discussion, this Court holds:
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> a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
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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 extraneous considerations.
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> 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.

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[1] (2010) 9 SCC 496

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 'rubberstamp 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).

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".

(10) Further, 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.
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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.
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> 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 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.

[2] AIR 2005 SC 2090

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:

> "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."

(11) The letter dated 6.7.2016 (Annexure P-22) issued by respondent No.4 cancelling the LOI dated 10.6.2016 (Annexure P-19) of the petitioner does not satisfy the requirements of being a reasoned one as enunciated by the Apex Court in ***M/s Kranti Associates Pvt. Ltd's case*** (supra) and is issued in violation of the principles of natural justice as per law laid down by the Supreme Court in ***V.K. Awasthy's case*** (supra), as noticed hereinabove. Accordingly, the writ petition is

allowed and the letter dated 6.7.2016 (Annexure P-22) issued by respondent No.4 cancelling the LOI dated 10.6.2016 (Annexure P-19) of the petitioner is quashed. The matter is remitted to respondent No.3 to pass a fresh speaking order after affording an opportunity of hearing to the petitioner in accordance with law. It is further directed that in case the matter is decided against the petitioner, the order passed thereon be not given effect for a period of one month thereafter. Needless to say that anything observed herein above shall not be taken to be an expression of opinion on the merits of the controversy.

Amit Aggarwal