IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 3584/2015
Reserved on: 4.9.2020
Decided on : 8.9.2020

Bimla Devi .....Petitioner

Versus

State of H.P. and ors. ....Respondents

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?[1]*Yes*

For the Petitioner: Ms. Tim Saran, Advocate.

For the Respondents: Mr. Ashok Sharma, A.G. with Mr. Vinod Thakur, Addl. A.G., Buphinder Thakur and Svaneel Jaswal, Dy.A.Gs.

(Through Video Conferencing)

Justice Tarlok Singh Chauhan, Judge

How knee-jerk reaction and media trial can create havoc and ruin not only someone's career, but even life is best reflected in the instant case.

2 The petitioner on 12.8.1986 was appointed as Anganwadi Helper in Anganwadi Centre Karian, District Chamba. On 11.4.2015, which happened to be a Second Saturday, one 10 year old girl 'A', who was studying in Government Primary School, Karian, disclosed to her mother that 15 days ago, when there was

[1] Whether reporters of the local papers may be allowed to see the judgment? Yes.

holiday on Saturday and she had gone to play in Anganwadi ground, in the evening at about 4.00 P.M. along with other children, 'H' son of the petitioner had sexually assaulted her. She further disclosed that said 'H' as and when got opportunity had also committed same act with other girls 'B', 'C' and 'D'. This led to registration of FIR No. 141/2015 against 'H' on 11.4.2015 at Police Station, Sadar, Chamba.

3 On 12.4.2015, this news was flashed across all the news papers. Not only this, even the Department and District Administration had swung into action immediately and an Inquiry Committee headed by Sub Division Officer (Civil) Chamba, comprising of District Project Officer, President, two female members of Child Welfare Committee, Chamba and two outreach workers of District Child Protection Unit,Chamba, was constituted on 12.4.2015. The Inquiry Committee had visited the spot on the same day and conducted inquiry. During the inquiry, show cause notice was served upon the petitioner, which was duly replied by the petitioner. The inquiry report was submitted on 16.4.2015.

4 Besides the aforesaid inquiry, the Department also conducted inquiry through Deputy Director (Social Justice and Empowerment), Himachal Pradesh and in all the inquiries , it had

come that the alleged incident had not happened in Anganwadi Centre or during working hours and no role or dereliction of duty was found on the part of the Anganwadi staff.

5 However, on 7.5.2015, the petitioner was served with show cause notice regarding her termination as Anganwadi Helper. The petitioner submitted her reply clarifying the matter with further request to drop the notice, however, services of the petitioner came to be terminated vide order dated 17.6.2015 and aggrieved thereby, the petitioner has filed the instant petition for grant of following substantive reliefs:-

> *"1.That the impugned termination dated dated 17.6.2015(Annexure P-32) may kindly be declared unjustified,illegal, unreasonable, irrational, arbitrary and unconstitutional and be quashed and set aside.*
> *2. That the respondents be directed to continue the petitioner to be posted as Anganwadi Helper in Anganwadi Centre, Karian, District Chamba, H.P."*

6 The respondents have contested the petition by filing reply wherein it is averred that since Anganwadi Centre was being run in the house of the petitioner, where she was living with her grown-up children, therefore, she was required to keep regular watch on the activities on her son and also to protect minor children from any type of exploitation. The petitioner had failed to

perform the duty as vigilant mother and guardian of minor children in the Anganwadi Centre. It is further averred that in the inquiry conducted by the respondents, it had come on record that son of the petitioner was having easy access to Anganwadi children, who frequently visit him and he in turn used to allure them by offering sweets and toffee and the petitioner being an elder woman and mother of grown up children, should have protected the Anganwadi children and prevented the children to visit her son during and after Anganwadi hours. The petitioner had miserably failed to protect the children, who had become victims of her son due to her negligence. Keeping in view seriousness and gravity of heinous crime, which was committed in the house of the petitioner, the services of the petitioner had been terminated after issuing notice and providing her due opportunity to explain her position before termination of services.

7 I have heard the learned counsel for the parties and have also gone through the records of the case.

8 It is not in dispute that date of the incident happens to be a holiday, i.e. Second Saturday, when the Anganwadi Centre was closed. It has further come on record that Anganwadi Centre was not running from the house of the petitioner as is evident from

the report given by the DPO, Chamba (Annexure P-22). In such circumstances, can the petitioner be punished for the alleged sins of her son?

9 There is no dispute as regards the petitioner that she had no direct role in the alleged incident of sexual assault on minor children and the same is otherwise evident and supported by the various statements recorded during the course of the inquiry. Her services appear to have been terminated only on the ground that she failed to discharge her duty as mother, guardian, care taker and protector.

10 According to the respondents, it was primary duty of the petitioner to keep watch on the activities of her son as she was aware of the fact that her son 'H' was staying at home and calling/alluring children by distributing them sweets etc. Whereas, record reveals that the petitioner was not at all aware of any such alleged activities. Further allegation is that had the petitioner kept vigil on the activities of her son 'H' and prevented children to mingle with him, such a heinous crime, which has brought slur on society/department, would have not taken place with periphery of Anganwadi Centre, where little innocent children are handled with care and motherly touch.

11 In abstract, contention of the respondents is absolutely correct, but when weighed with the evidence and other circumstances on record, the same must fail as there is no evidence on record to suggest that the petitioner had any role at all in the entire incident.

12 As a matter of fact, it has come on record that besides 'H', other family members including two daughters and one son of the petitioner, other persons are also residing in and around the Anganwadi Centre and had these facts come to the notice of the petitioner, then this Court sees no reason, why the petitioner would not have taken adequate remedial steps/measures.

13 It would be noticed that prior to the order of termination, the petitioner was issued a show cause notice by the Child Development Project Officer, Mehla, to which a detailed reply, running into 6 pages, was submitted by the petitioner, however the CDPO without taking into consideration the reply, proceed to terminate the services of the petitioner by observing as under:-

> *"Consequent upon the inquiry conducted against Smt. Bimla Anganwadi Helper Anganwadi Centre Kariana 1.C.D.S. Project Mehla, further notice issued vide this office letter No. 1.C.D.S. Mehla-9 dated 28-04-2015 and after going through the contents of reply dated 16-05-2015 submitted by her. It*

has been revealed that Smt. Bimla Anganwadi Helper Anganwadi Centre Kariana has failed to perform her duties properly in Anganwadi Centre Kariana, because it was the duty of Smt. Bimla Devi Anganwadi Helper to ensure safety of the children in Anganwadi Centre by not allowing any outside person to enter the premises of Anganwadi Centre but her indifferent attitude to duty resulted in infliction of sexual abuse of girl child Shreya enrolled in Anganwadi Centre and other children. Therefore, as per approval conveyed by the Director Women & Child Development Himachal Pradesh Shiml1 vide letter No.14-18/2007-ICDS dated 15th June,, 2015 and provisions given in Rule 7 of revised guidelines for the appointment of Anganwadi Workers/Helpers under ICDS Programme in Himachal Pradesh issued by the department of Social Justice & Empowerment Govt. Of Himachal Pradesh vide notification No. WLF-B(14)-3/87 dated 05-10-2009, Smt. Bimla Anganwadi Helper Anganwadi Centre Kariana 1.C.D.S. Project Mehla, is terminated from the post of Anganwadì Helper and her services is dispensed w.e.f. immediate effect."

14 It is well settled that disciplinary inquiry being quasi-judicial inquiry has to be held in accordance with the principles of natural justice and the inquiry officer has a duty to act judicially.

15 In the instant case, the Inquiry Officer did not apply its mind to the defence of the petitioner. No reason has been assigned

why the defence of the petitioner did not appeal to him/her or was considered not credit worthy.

16 An inquiry report in a quasi-judicial inquiry must show the reasons for the conclusion. It cannot be an *ipse dixit* of the Inquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. It should all the more be so where the quasi-judicial inquiry may result in deprivation of livelihood or attach a stigma to the character.

17 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 the 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.

18 The necessity of assigning reason has been repeatedly emphasized by the Hon'ble Supreme Court and reference in this regard can conveniently be made to the judgment of the Hon'ble

Supreme Court in ***Kranti Associates Pvt. Ltd. and another versus Masood Ahmed Khan and Others (2010) 9 SSC 496,*** wherein after taking into consideration the entire law on the subject, the position of law was summarized as under:-

> *"47. 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 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 731-37).

(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

Ruiz Torija v.Spain (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".

19 In ***Ravi Yashwant Bhoir Vs. District Collector, Raigad and others (2012) 4 SCC 407,*** the Hon'ble Supreme Court held as under:-

"38. It is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.

39. In Shrilekha Vidyarthi Vs. U.P. (1991) 1 SCC 212 *this Court has observed as under: (SCC p. 243, para 36).*

"36……Every State action may be informed by reason and it follows that an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is the trite law that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

40. In LIC Vs. Consumer Education and Research Centre (1995) 5 SCC 482 this Court observed that the State or its

instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. A similar view has been reiterated by this Court in Union of India Vs. Mohan Lal Capoor (1973) 2 SCC 836 and Mahesh Chandra Vs. U.P. Financial Corpn.(1993) 2 SCC 279.

41. In State of W.B. Vs. Atul Krishna Shaw 1991 Supp (1) SCC 414, this Court observed that : (SCC p. 421, para 7)

"7....Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."

42. In S.N. Mukherjee Vs. Union of India(1990) 4 SCC 594, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as to it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43. In Krishna Swami Vs. Union of India (1992) 4 SCC 605, this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne out from

the record. The Court further observed: (SCC p. 637, para 47).

"47……Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21".

44. This Court while deciding the issue in Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd.(2010) 13 SCC 336, placing reliance on its various earlier judgments held as under: (SCC pp. 345-46, para 27).

"27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

'3….The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the

manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind'. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before the higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

45. In Institute of Chartered Accountants of India Vs. L.K. Ratna (1986) 4 SCC 537, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held: (SCC p. 558, para 30).

"30.....In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilty of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a 'finding'. Moreover, the reasons contained in the report by

the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

46. The emphasis on recording reason 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 of the authority before the 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 the 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."

20 Adverting to the facts, no doubt, allegations against the son of the petitioner are extremely grave and if proved in Court of law, could lead to serious consequences,but then how and why the petitioner be made to pay the price of misdemeanor and the alleged acts of her son, especially when the petitioner is not accused of abetment, conspiracy or other allegations or even made party in the criminal case instituted against her son.

21 There is an old maxim that an accused shall be presumed to be innocent until proven guilty and the charges must

be proved beyond reasonable doubt. This is a part of classical legal legacy and now so deeply entrenched in the jurisprudence of the societies governed by rule of law.

22 Even on the date of the termination of the services of the petitioner, status of her son was that of only an accused and not of a convict, which distinction unfortunately has not been kept in mind by the respondents while terminating services of the petitioner.

23 As observed above, knee-jerk reaction on the part of the respondents being not only influenced, but prejudiced by the media trial/reports ensured that the petitioner is shown the door.

24 Above all, the respondent have failed to realize that the petitioner is not only a woman, but also a mother, who would have never ever permitted anyone including her son to indulge in any of the alleged activities for which he has been accused and is facing trial.

25 In view of the aforesaid discussion, I find merit in the instant petition and the same is accordingly allowed. Consequently, the impugned termination order, dated 17.6.2015(Annexure P-32) is quashed and set aside and the respondents are directed to reinstate the services of the petitioner

forthwith as Anganwadi Helper in Anganwadi Centre, Karian, District Chamba and grant her all consequential benefits including seniority, but not the honorarium for the period, she had not actually worked. Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

8.9.2020
(pankaj)