

U.O.I. AND ORS.

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v

JAI PRAKASH SINGH AND ANR.

MARCH 8, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

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Judgment/Order:

Non-reasoned order—Writ Petitioner claiming benefit under a policy—High Court without indicating reasons describing the policy to be arbitrary—Challenge against—Held, High Court traveled beyond the pleadings—Order being cryptic and without reasons is not sustainable.

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Writ Petitioner-respondent No. 1 was not granted permission to operate Gramin PCO. He filed Writ Petition before the High Court. Appellants contended before High Court that a Gramin PCO described in the guidelines of Ministry of Communications, as Village Public Telephone (VPT) was already existing in the concerned village and, therefore, the prayer of writ petitioner could not be accepted.

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High Court by cryptic order held that the conditions in the guidelines were arbitrary and violative of Article 14 of the Constitution of India, 1950 and directed to allot a VPT.

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In appeal to this Court, Appellants challenged the order on the ground that no reason has been indicated as to why the guidelines were found to be illegal/arbitrary under the National Communication Policy, 1994, Department of Telecommunication is providing VPT. They further contended that the department did not have adequate resources to provide more than one VPT in a village under the VPT programme. However, Wherever technically feasible, second and subsequent public telephone can be provided which shall be at the cost of the appellant.

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Allowing the appeal, the Court

HELD: 1. The 1994 guidelines have been amended from time to time and clarifications have been issued subsequently on 8.12.1998 and 9.3.1999.

- A It appears that for installation of VPT, definite role is assigned to the Gram Panchayat. The guidelines of 8.12.1988 stipulate that the Gram Panchayat will recommended only one VPT in a village and the Question of multiple cases does not arise. In case of any dispute, the case is to be discussed with Panchayats and resolved. The recommendations for extension/location are to be given by the Panchayat or the BDO as the case may be. [Para 6]
- B [760-C-D]

2. The High Court, without indicating any reason has described the policy to be arbitrary. Interestingly, the writ petitioner had not challenged the legality of the policy. In fact, he was claiming benefit under the policy.

- C Unfortunately, the High Court traveled beyond the pleadings. It did not grant any opportunity to the present appellant to file even counter affidavit and by a non-reasoned order struck down the policy. The order of the High Court has been stayed by this Court on 1.9.1999. [Para 7] [760-E]

- D 3.1. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, however brief in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable. [Para 8]

- E *Breen v. Amalgamated Engineering Union*, [1971] 1 All E.R. 1148 and *Alexander Machinery (Dudley) Ltd. v. Crabtree*, (1974) LCR 120, referred to.

- F 3.2. 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, reason 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 a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. [Para 9] [760-H; 761-A, B, C]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5687 of 2000. A

From the Judgment and Order dated 17.3.1999 of the High Court of Judicature at Allahabad in C.M.W.P.No. 10275 of 1999.

T.S. Doabia, Sunita Sharma and P. Parmeswaran for the Appellants. B

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court allowing the writ petition filed by respondent no.1. C

2. A brief reference to the factual position would suffice:

3. Respondent no.1 filed a writ petition before the Allahabad High Court alleging that he was not granted permission to operate Gramin PCO and his prayer was that he should have been granted such permission. Appellants who were the respondents 1 to 4 in the writ petition took the stand that according to the guidelines of the Ministry of Communication one Gramin PCOI (described in the guidelines as Village Public Telephone, in short the 'VPT') already existing in the concerned village and, therefore, the prayer of the writ petitioner could not be accepted in view of the guidelines. The High Court by a cryptic non-reasoned order held that the conditions in the guidelines "appear to be arbitrary" and hence violative of Article 14 of the Constitution of India, 1950 (in short the Constitution). Accordingly direction was granted to allot a VPT to the writ petitioner within the stipulated time. D E

4. Appellants have challenged the order on the ground that no reason has been indicated as to why the guidelines were found to be illegal/arbitrary under the national Communication Policy, 1994; Department of Telecommunication is providing VPT. One VPT is provided in a Revenue village. There are nearly 60,77,491 village in the country. By 31.3.1999, therefore, 3,40,640 villages, which, have been provided with VPT's and remaining villages were to be provided VPT's progressively by March, 2002 . In UP (Eastern) Telecom Circle, there are nearly 75,698 villages, out of which 29,970 villages have been provided with VPT's and rest about 45,000 villages were to be provided with VPT's. It is pointed out that after all the villages are provided with public telephones, additional PCOs can be provided depending upon technical feasibility and demand. The difference between VPT and PCO is that the call charges made from a VPT are less than those from PCO. Also the F G H

A commission to the operative custodian of a VPT is higher than that payable to a PCO operator custodian. The commission is percentage of revenue depending on the call charges. It was also submitted that the department did not have adequate resources to provide more than one VPT in a village under the VPT programme. However, wherever technically feasible, second and subsequent public telephone can be provided which shall be at the cost of the applicant. Without indicating any reason as to how the guidelines were arbitrary, the High Court has issued the directions.

5. There is no appearance on behalf of the respondent no. 1 who was the writ petitioner.

C 6. We find that 1994 guidelines have been amended from time to time and clarifications have been issued subsequently on 8.12.1998 and 9.3.1999. It appears that for installation of VPT, the role assigned to the Gram Panchayat. The guidelines of 8.12.1988 stipulate that the Gram Panchayat will recommend only one VPT in a village and the question of multiple cases does not arise.

D In case of any dispute, the case is to be discussed with Panchayats and resolved. The recommendations for extension/location are to be given by the Panchayat or the BDO as the case may be.

7. As rightly submitted by learned counsel for the appellants, without indicating any reason, the High Court has described the policy to be arbitrary.

E Interestingly, the writ petitioner had not challenged the legality of the policy. In fact, he was claiming benefit under the policy. Unfortunately, the High Court travelled beyond the pleadings. It did not grant any opportunity to the present appellant to file even counter affidavit and by a non-reasoned order struck down the policy. The order of the High Court has been stayed by this Court on 1.9.1999.

F 8. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, however brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

G 9. Even in respect of administrative orders *Lord Denning M.R. in Breen v. Amalgamated Engineering Union*, [1971] 1 All E.R. 1148 observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree*, (1974) LCR 120 it was

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observed: "Failure to give reasons amounts to denial of justice". Reasons are A
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 B
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 C
justice is spelling out reasons for the order made, in other words, a speaking
out. the "inscrutable face of a sphinx" is ordinarily incongruous with a judicial
or quasi-judicial performance.

10. The inevitable conclusion is that the impugned order of the High
Court is unsustainable and is set aside. The appeal is allowed. No costs.

D.G.

Appeal allowed.