

BOARD OF TRUSTEES OF MARTYRS MEMORIAL
TRUST AND ANOTHER

v.

UNION OF INDIA AND OTHERS
(Civil Appeal No. 4444 of 2010)

OCTOBER 4, 2012

[R.M. LODHA AND ANIL R. DAVE, JJ.]

Constitution of India, 1950:

Art. 226 - Writ petition - Disposal of, without adjudication on the issues involved - Held: A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable - Each and every matter that comes to court must be examined with the seriousness it deserves - In the instant case, the writ petition was disposed of by High Court without calling for any counter-affidavit from respondents - Appellants have raised some serious issues concerning the action of the District Collector, who wrote the letter in his capacity as Secretary of the Trust to himself and then passed an order of cancellation of allotment of Government accommodation of the Trust in his capacity as District Magistrate under pressure of the political party then ruling the State - These serious allegations did require response from the District Magistrate - Impugned order is set aside - Writ petition is restored to the file of High Court for consideration and disposal afresh - Judgments/Orders - Administration of justice.

Appellant No. 1, a public charitable trust, was created with the object to perpetuate the memory of the martyrs of National Freedom Movement, and on 27.3.2002 was allotted Government Accommodation nos. 1 and 2 of Revenue Department, Ballia (U.P.). An I.T.Training

A Institute for the poor and underprivileged students was established under aegis of the Trust in the subject premises and the building constructed on the adjoining land. The Institute was recognized by the Government of India under the Employment Generation Training Scheme (EGTS). It was the case of the appellant-Trust that on 15.05.2009, the District Collector, who was also the Secretary of the Trust, issued an order canceling the allotment of the Government Accommodation made in favour of the Trust on the ground that a request had been received from the Secretary of the Trust by letter dated 28.02.2009 to cancel the allotment. Subsequently, the subject premises were sealed by the official of the State Government. In the writ petition filed by the Principal of the Institute, the High Court passed an interim order dated 28.08.2009 directing the authorities to remove the seal, and permitted examinations to be held. Subsequently, the appellant Trust also filed Civil Misc. Writ Petition No. 49841 of 2009 challenging the order dated 15.05.2009. The High Court declined to interfere and disposed of the writ petition observing that the writ petitioners had no vested right in the subject premises.

Allowing the appeal, the Court

F HELD: 1.1 A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration. [Para 21] [224-E-F]

H 1.2 In the instant case, admittedly, the writ petition was disposed of by the High Court without calling for any counter-affidavit from the respondents. The appellants

have raised some serious issues concerning the action of the District Collector. The Secretary of the Trust also happened to be the District Collector. He is alleged to have not convened any meeting of the Trust and on his own, took a decision to surrender the Government accommodation allotted to the Trust on make believe and self-created grounds that the allotted Government accommodation was not being used by the Trust for the purpose for which it was allotted to the said Trust. The appellants have alleged that the action of the District Magistrate by sending the communication dated 28.02.2009, as the Secretary of the Trust for surrendering the Government accommodation and then passing the order himself on 15.05.2009 cancelling the allotment was at the behest of the political party ruling the State at that time. It has also been alleged that this was done because the ruling party did not have any office in the City and so it started putting pressure on the District Magistrate for cancelling the Government accommodation allotted to the Trust. These serious allegations did require response from the District Magistrate, who wrote the letter in his capacity as Secretary of the Trust on 28.2.2009 to himself and then passed an order of cancellation of allotment of Government accommodation of the Trust in his capacity as District Magistrate on 15.05.2009. [Para 22] [224-G-H; 225-A-D]

1.3 The impugned order cannot be sustained as the writ petition filed by the appellants (petitioners before the High Court) deserves fresh consideration and hearing after receipt of the response from the respondents. The impugned order is set-aside. Civil Misc. Writ Petition No. 49841 of 2009 is restored to the file of the High Court for consideration and disposal afresh. [Paras 23 and 24] [225-E-F]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4444 of 2010.

From the Judgment and Order dated 16.09.2009 of the High Court of Judicature at Allahabad in Civil Writ Petition No. 49841 of 2009.

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Ajay Vikram Singh (for Renjith. B), M. Khairati, Vikas Bansal (For D.S. Mahra), M.R. Shamshad, Vivek Vishnoi, Rohit for the Appearing Parties.

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The Judgment of the Court was delivered by

R.M. LODHA, J. 1. This appeal raises the question pertaining to cancellation of allotment of Government Accommodation Nos. 1 and 2, Civil Lines, Ballia (U.P.) (hereinafter referred to as "Government accommodation").

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2. Martyrs Memorial Trust (Shaheed Smarak Nyas), the first appellant, a public charitable trust (for short "the Trust"), was constituted by a deed of declaration dated June 5, 1997. The preamble of the Deed of Trust records that the people of India suffered immensely under the British Rule for more than two hundred years and at the call of Mahatma Gandhi, thousands of men and women from different walks of life joined the National Freedom Movement and directly associated themselves with various constructive programmes. It was decided to constitute a public charitable trust in the fond memory of the martyrs and freedom fighters hailing from Ballia and eastern Uttar Pradesh with a view to perpetuate their names and strengthening the task of nation building.

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3. On August 19, 1992, the then Prime Minister of India Mr. P.V. Narasimha Rao, on the occasion of Golden Jubilee Celebration of the Quit India Movement of 1942 at Ballia, had announced while addressing a meeting at Jayaprakash Nagar, the birth place of Shri Jayaprakash Narayan, that a sum of rupees one crore would be made available by the Government of India for the construction of Shaheed Smarak (Martyrs

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Memorial) at Ballia. The then Chief Minister of Uttar Pradesh also announced a sum of Rs. 25 lakhs for this purpose. A

4. In order to ensure the establishment of Shaheed Smarak at Ballia, the Ministry of Human Resources & Development nominated Shri Chandra Shekhar as the President and some freedom fighters and other including ex-officio trustees to look after various aspects of the Trust. B

5. The aims and objectives declared in the trust deed, inter alia, provide for the Trust to be a centre for perpetuating the memory of the martyrs and freedom fighters and for carrying on such constructive activities as may be beneficial to the surviving freedom fighters and their dependents; to collect, preserve, publish and distribute various records, plans, books, writings, lectures, letters, correspondence, teachings and messages of the martyrs and freedom fighters together with their autobiographies, biographies, anecdotes and reminiscence highlighting their feelings and sentiments against British Tyranny and strong determination for the independence of the country; to set up, maintain and run museum where various relics, objects of veneration photographs, paintings, sketches, articles and things connected with the history of struggle for independence have to be preserved; to establish rapport with various educational institutions and Government organizations, public undertakings and private enterprises for the admission in different courses of studies and subsequent absorption for employment of the children and freedom fighters on some reservation basis and to motivate, encourage and assist people of different age groups regardless of caste, creed, religion and sex for their active participation in various types of suitable sports for them and to provide necessary coaching facilities for the same. C
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6. The Deed of Trust also provides that the management and control of the Trust and the Trust properties shall vest in the Board of Trustees which shall comprise of not less than three nor more than fifteen trustees including the Chairman and H

A Managing Trustee. Shri Chandra Shekhar, Shri Narayan Dutt Tiwari and the Secretary, Culture, Government of India were first three trustees; Shri Chandra Shekhar being the Chairman. In addition to the above, the Secretary, Culture, Government of Uttar Pradesh, the Accountant General, U.P (or their respective
 B nominees) and District Magistrate, Ballia are made ex-officio trustees and they hold their office as long as they continue in the same capacity.

C 7. Clause 11 of the Deed of Trust provides for appointment of new trustees. Power to sell and manage the immovable property is provided in clause 22.

8. On March 27, 2002, the office of the District Collector, Ballia allotted Government accommodation Nos. 1 and 2 of the Revenue Department, Ballia to the Trust as it was lying vacant.
 D The permission for allotment of the above Government accommodation to the Trust was also accorded by the State Government. The Board of Trustees passed a resolution to establish I.T. Training Institute under the aegis of the Trust for the poor and underprivileged students. The Institute was
 E established in the name of Dr. Ganeshi Prasad, a well known Mathematician. The Institute had been functioning from the Government accommodation and also the building constructed on the adjoining land. The building on the adjoining land is said to have been constructed under the M.P. Local Area
 F Development Scheme for 2002-2003 and 2003-2004 and some other funds. The said Institute is authorized to run DOEACC Society's 'O' Level and 'CCC' courses conducted by the Information and Technology Ministry, Government of India. This Institute is recognized by the Government of India to teach
 G backward and poor students under EGTS (Employment Generation Training Scheme).

9. From the communication dated June 6, 2004, sent by the Additional District Development Officer (Social Welfare) to the Managing Director, Scheduled Caste Finance and
 H Development corporation Ltd., Lucknow, it transpires that on

physical inspection at that time, it was found that 500 students had been imparted computer education in the Institute by then. Out of the 150 students, who were being imparted education in the Institute at the time of inspection, 80 students belonged to Scheduled Caste and Scheduled Tribe poor families and those students were being imparted computer education on minimum fee. The communication also noted that the Institute was equipped with 40 computers and the teachers of the Institute were highly educated and experienced as well. A
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10. Strangely, on May 15, 2009, the District Collector, Ballia issued an order cancelling the allotment of Government accommodation made in favour of the Trust on the grounds that a request has been received from the Secretary of the Trust vide his letter dated February 28, 2009 that allotment be cancelled because no work of the Trust was being done from the premises and the Trust was not using the said accommodation. The Secretary of Trust is none other than the District Collector himself. C
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11. Subsequent to the order of cancellation dated May 15, 2009, the District Collector, Ballia and other officials of the State accompanied by the police force sealed the Government accommodation although the examinations were to commence on August 29, 2009. This led the Principal of the Institute, Mr. Pradeep Rai to file a Writ Petition No. 44477 of 2009 before the Allahabad High Court seeking a writ of mandamus for a direction to the District Collector, Ballia and other officials of the State to open the locks and seal. E
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12. By an interim order dated August 28, 2009, the Division Bench of the High Court of judicature at Allahabad, directed the concerned respondents to remove the seal and permitted the examinations to be held. G

13. On August 30, 2009, the trustees of the Trust wrote to the District Officer/Secretary of the Trust to call for the meeting of the Trust and place for consideration the letter dated H

- A February 28, 2009, sent by him to himself as District Collector for surrender of the Government accommodation. The said letter recorded that in the absence of consideration of any proposal by the Trust, the communication dated February 28, 2009 sent by the District Officer in his capacity as the Secretary of the
- B Trust was not acceptable. No meeting of the Trust was called to discuss the matter nor the matter was considered by the Trust in that regard.

C 14. The letter dated August 30, 2009 sent by the trustees of the Trust to the District Officer/Secretary of the Trust was followed by another letter dated September 4, 2009 reiterating that the meeting of the Trust be called within two days for discussion with regard to the letter dated February 28, 2009 failing which suitable action would be taken.

D 15. It was then that a Writ Petition was filed by the Trust being Civil Miscellaneous Writ Petition No. 49841 of 2009 before the High Court of judicature at Allahabad.

E 16. In the above Writ Petition, the Trust challenged the order dated May 15, 2009 cancelling the allotment of Government accommodation in favour of the Trust.

F 17. Inter alia, in the Writ Petition, it was averred that the Board of Trustees had passed a resolution to establish I.T. Training Institute under the aegis of the Trust for the poor and unprivileged students and they also decided to start some recognized courses like 'O' level and 'A' level courses from DOEACC Society, New Delhi. The Institute was established in the name of a well known Mathematician Dr. Ganeshi Prasad. The Trust made a proposal for establishment of education

G center for information technology under the EGTS (Employment General Training Scheme) to the Minister of Information & Technology, who having considered the proposal, granted sanction to start training programme for the weaker section of the society and released fund to the Trust for imparting

H education. The Ministry had also made available computer

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apparatus and other allied materials for implementing the scheme. A

18. After the death of Shri Chandra Shekhar, a resolution was passed wherein it was decided that Shri Ravi Shanker Singh – appellant No. 2 shall be the Chairman till the next election was held. B

19. The appellants alleged in the Writ Petition that Bahujan Samaj Party (BSP), which was ruling the State, did not have an office at Ballia. BSP started putting pressure on the District Magistrate, Ballia for cancellation of the Government accommodation and the District Magistrate, under the political pressure, wrote a letter to himself in his capacity as Secretary of the Trust requesting for surrender of the Government accommodation. The misuse of the position by the District Magistrate was also alleged. It was alleged that in the absence of any resolution passed by the Board of Trustees, the decision taken by the District Magistrate, Ballia, who happened to be the Secretary of the Trust, to surrender the Government accommodation to himself and then cancelling the allotment in his capacity as District Magistrate was illegal. C
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20. There is nothing on record to show that counter-affidavit was filed by the District Magistrate, Ballia or other functionaries of the State in opposition to the Writ Petition before the High Court. Learned counsel for the parties agreed that the Writ Petition was disposed of by the High Court without calling for any counter-affidavit from the respondents. The order of the High Court reads as under: F

“Vide order dated 15th may, 2009 which has been impugned in the present Writ Petition the allotment of Government Residential Accommodation No. 1 and 2 to Shaheed Smarak Nyas, Basantpur, Ballia has been cancelled. G

We are not inclined to interfere in the said order as the H

A petitioner has no vested right to continue to hold the said accommodation as it is only a licensee. Shri Ashok Khare, learned senior standing counsel assisted by Shri H.K. Singh has submitted that under the garb of the order dated 15th May, 2009, the authorities are also disturbing the peaceful possession of the constructions made in the adjoining land.

B It is not clear as to whether adjoining land is part of this accommodation or not. If the same is not part of the accommodation No. 1 and 2 then obviously under the garb of this order the authorities cannot disturb the possession of the petitioner in respect of the constructions made on the adjoining land. However, if the adjoining land on which the construction is alleged is part of the Government accommodation No.1 and 2, then the authorities are justified on their part. The Writ Petition is disposed of with the aforesaid observation. Ms. Poonam Singh, learned counsel has appeared for the respondent Nos. 1 and 2.”

21. Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor brief orders are always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves.

22. In the present case, the appellants have raised some serious issues concerning the action of the District Collector, Ballia. The Secretary of the Trust also happened to be the District Collector. He is alleged to have not convened any meeting of the Trust and on his own, took a decision to surrender the Government accommodation allotted to the Trust on make believe and self created grounds that the allotted Government accommodation was not being used by the Trust

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for the purpose for which it was allotted to the said Trust. The appellants have alleged that the action of the District Magistrate by sending a communication dated February 28, 2009, as the Secretary of the Trust for surrendering the Government accommodation and then passing the order himself on September 15, 2009 cancelling the allotment was at the behest of the BSP which was ruling the State at that time. It has also been alleged that this was done because BSP was not having any office in Ballia and so it started putting pressure on the District Magistrate for cancelling the Government accommodation allotted to the Trust. These serious allegations did require response from the District Magistrate, Ballia who wrote the letter in his capacity as Secretary of the Trust on February 28, 2009 to himself and then passed an order of cancellation of allotment of Government accommodation of the Trust in his capacity as District Magistrate on May 15, 2009.

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23. We are satisfied that the impugned order cannot be sustained and has to be set-aside as the Writ Petition filed by the appellants (petitioners before the High Court) deserves fresh consideration and hearing after receipt of the response from the respondents.

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24. Appeal is allowed to the above extent. The impugned order is set-aside. Civil Misc. Writ Petition No. 49841 of 2009 – Board of Trustees of Martyrs Memorial Trust and another vs. Union of India and others is restored to the file of the High Court of judicature at Allahabad for fresh consideration and disposal, as noted above. The parties shall bear their own costs.

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R.P.

Appeal Allowed.