2021:APHC:20651

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

Writ Petition No.15981 of 2021

Between:

Tumalapalli Vinay Veerabahdra Rao **---** Petitioner

And

1. The State of Andhra Pradesh
Rep., by it's Principal Secretary,
Animal Husbandry Dairy Development
And Fisheries Department, Secretariat Building,
Amaravathi and others.

…Respondents

DATE OF ORDER PRONOUNCED : 12.8.2021

SUBMITTED FOR APPROVAL:

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No

2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the order? Yes/No

KONGARA VIJAYA LAKSHMI, J

2021:APHC:20651

*** <u>HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI</u>**

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Animal Husbandry Dairy Development
And Fisheries Department, Secretariat Building,
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…Respondents

! Counsel for the Petitioner : Sri N.A.Ramachandra Murthy

^ Counsel for the Respondents : Learned Government Pleader for Animal Hundary for respondent Nos.1to 6

< Gist:

> Head Note:

? Cases referred:

Nil

This court made the following :

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.15981 of 2021

ORDER:-

This writ petition is filed questioning the proceedings of the 2nd respondent, dated 16.6.2021, rejecting the application of the petitioner, which is filed seeking grant of license for aquaculture operations, as illegal and arbitrary.

2. Case of the petitioner is that,

(a) he is the owner and possessor of land admeasuring an extent of Ac.6.40 cents in Sy.Nos.450 and 466/1 of Pippara Village, Ganapavaram Mandal, West Godavari District

(b) he filed an application on 16.6.2021 before the 2nd respondent for grant of permission for doing aquaculture in an extent of Ac.2.51 cents

(c) the said application was rejected by the 2nd respondent/District Level Committee on the same day when it was filed, without assigning any cogent reasons and without following the procedure as contemplated under law, which is contrary to Section 23 (7) of the Andhra Pradesh State Aquaculture Development Authority Act, 2020.

Challenging the same, the present writ petition is filed.

3. Heard the learned counsel for the petitioner and the learned Government Pleader for Animal Husbandry and with their consent this writ petition is disposed at the stage of admission.

4. As seen from the impugned order, petitioner filed an application seeking license/endorsement for Aquaculture Farm on 16.6.2021 and on the same day, the impugned rejection order was passed under Rule 12 of the Andhra Pradesh State Aquaculture Development Authority Rules, 2020 (for short 'Rules of 2020'). The said rejection order reads as follows;

> "Your Application filed vide reference cited for license/endorsement/transfer of license for Acqua farm/license for Aquaculture business operations/Innovative Technology in favour of Vinay Veerabhadra Rao Thummalapalli (Name of the application/firm/company) Proposed/Located at Miyapur Ganpavaram (R) West Godavari District is hereby rejected due to following reasons.
>
> - Superintending Engineer, I and CAD – Deemed approval without the recommendation of Asst. Executive Engineer Irrigation. Hence recommended for rejection
> - Joint Collector Rythu Bharosa – Too many deemed approvals from Mandal Level Committee Members. Hence this application is recommended for rejection."

5. Section 22 of the Andhra Pradesh State Aquaculture Development Authority Act, 2020 (herein after referred to as 'the Act of 2020') deals with "Process of issuance of License for doing Aquaculture and the same reads as follows;

> (1) All the existing aquaculture farmers who already got licenses /registrations for their farms from Department of Fisheries/CAA/MPEDA shall be eligible for continuation of their

licenses/registrations. It is not necessary to apply for license/ registration afresh. However, these old licenses/ registrations are to be endorsed by the licensing authority of this Act in order to consider them to be issued under this Act.

(2) The licensed/registered aquaculture farmers under sub-section (1),shall submit their details in the prescribed format along with prescribed fee within four (4) months from the appointed date.

(3) The applications received, under sub-section (2) for endorsement of existing licenses/ registrations, the process of endorsement shall be completed by the licensing authority within 15 days by following the prescribed procedure.

(4) If acceptance or rejection of application made under sub-section (2) is not issued within the stipulated time of fifteen (15) days, the license shall be deemed to be endorsed.

(5) If any existing aquaculture farmers who have not got license/ registered with Department of Fisheries/CAA /MPEDA as on appointed date, shall apply for license in the prescribed format along with license fee within four (4) months from the appointed date.

(6)The license shall be issued by the licensing authority for the applications received under sub-sections (5) within fifteen (15) days from the date of application.

(7)If acceptance or rejection of application for license made under sub- section(5) is not issued within

> fifteen (15) days from the date of application, the license shall be deemed to be issued.
>
> (8)For obtaining license for new farms, application shall be submitted in the prescribed format along with prescribed license fee.
>
> (9)Detailed procedure of issuance of license for applications received under sub-section (8) shall be issued as may be prescribed.

6. Section 23 of the Act of 2020 deals with Process of issuance of License for doing Aquaculture Business, which reads as follows;

> (1) Licenses already issued to the existing aquaculture business operators by any department under any other Act shall be valid and it is not necessary to apply for license afresh. However, these old licenses are to be endorsed by the licensing authority of this Act in order to consider them to be issued under this Act.
>
> (2) The old licenses endorsed by the licensing authority are governed by the provisions of this Act.
>
> (3) The applications received, under sub-section (1) for endorsement of existing licenses, the process of endorsement shall be completed by the licensing authority within fifteen (15) days, by following the prescribed procedure.
>
> (4) If acceptance or rejection of application made under sub-section (1) is not issued within the

stipulated time of fifteen (15) days, the license shall be deemed to be endorsed.

(5) Any person who wish to start a new Aquaculture Business Operations/ any firm registered under Partnership Act (Central Act No.9 of 1932)/ any company registered under Companies Act (Central Act No.18 of 2013), which desires to start new Aquaculture Business Operations shall apply for the license under prescribed category of Aquaculture Business Operations along with the prescribed license fee to the Licensing Authority in the manner prescribed under Rules to be framed under this Act.

(6) In case if any person/firm/company wishes to undertake more than one Aquaculture Business Operations shall need to tick concerned business operations in the application and need to remit license fee for each type of business operation separately.

(7) If any application under sub-section (5) is submitted, the Licensing Authority:

(a) If satisfied that the applicant has fulfilled all the terms and conditions of application for carrying out the Aquaculture Business Operations, the Licensing Authority shall issue the license within fifteen (15) days from the date of application; or

(b)<u>If the Licensing Authority is of the opinion that the applicant has not fulfilled majority of the prescribed terms and conditions, the applicant shall be informed the same and be given an opportunity to furnish documents before rejecting the application within fifteen (15) days from the</u>

date of receipt of letter issued by licensing authority.

(c) If acceptance or rejection of application made under sub-section (1) is not issued within the stipulated time of fifteen (15) days, the license shall be deemed to be issued.

(8) If any person/firm, carrying out the Aquaculture Business Operations without any license immediately before commencement of this law, the person/company/ firm shall apply to the Licensing Authority within a period of four (4) months from the appointed date as may be prescribed.

(9) If application is not submitted for license within the time limit as prescribed under sub-section (4), the Licensing Authority can order for stopping all Aquaculture Business Operations being undertaken by the person/company/firm.

(10) If any application under sub-section (8) is submitted, the Licensing Authority:-

(a) If satisfied that the applicant has fulfilled all the terms and conditions of application for carrying out the Aquaculture Business Operations, the Licensing Authority shall issue the license within fifteen (15) days from the date of application;or
(b) If the Licensing Authority is of the opinion that the applicant has not fulfilled majority of the prescribed terms and conditions, the applicant shall be informed the same and be given an opportunity to furnish documents before rejecting the application within fifteen (15) days from the date of receipt of letter issued by the licensing authority.

> (c) Till the time of receiving acceptance or rejection of application made under sub-section (8), the applicant may continue to operate aquaculture business operations.
> (d) If acceptance or rejection of application made under sub-section (8) is not issued within the stipulated time of 15 days, the license shall be deemed to be endorsed.
>
> (11) The licensing authority shall make sure all the applications for issuance of license / endorsement of license are in full shape so that the rate of rejection is as minimum as possible. The licensing authority shall facilitate the application process and shall render all possible support and assistance to the applicants.

7. As seen from Section 23 (5) of the Act of 2020 any person who wish to start a new Aquaculture Business Operations shall apply for the license under prescribed category of Aquaculture Business Operations along with the prescribed license fee to the Licensing Authority in the manner prescribed under the Rules to be framed under the Act and according to Section 23 (7) (a) of the Act of 2020, if any application is submitted under Section 23(5) of the Act of 2020 and the Licensing Authority, if satisfied that the applicant has fulfilled all the terms and conditions of application for carrying out the Aquaculture Business Operations, the Licensing Authority shall issue the license within fifteen (15) days from the date of application and if the Licensing Authority is of the opinion that the applicant has

not fulfilled majority of the prescribed terms and conditions, the applicant shall be informed about the same and be given an opportunity to furnish documents before rejecting the application within fifteen (15) days from the date of receipt of letter issued by Licensing Authority. An appeal lies against the decision of the Licensing Authority within 30 days from the date on which the decision is communicated, to the Aquaculture Controller under Section 35 of the Act.

8. Rules have been framed under the Act of 2020, which are called as the Andhra Pradesh State Aquaculture Development Authority Rules, 2020. Rule 12 of the said Rules deals with issuance of licenses and endorsement and detailed procedure has been stipulated under the said Rules. But, the rejection order shows that it is rejected on two grounds, which are extracted above. One of the grounds for the rejection is that “too many deemed approvals from Mandal Level Committee members. Hence, the application is recommended for rejection.”

9. When the matter came up for hearing on 05.8.2021, as the said rejection order is not clear, the learned Assistant Government Pleader was asked to get instructions as to why the application of the petitioner was rejected. Today, the learned Assistant Government Pleader submits that the application of the petitioner was rejected as he did not fulfill certain conditions in G.O.Ms.No.7 Animal Husbandry, Dairy Development and Fisheries (FISH-II) Department, dated

16.3.2013. But, the said grounds are not mentioned in the impugned order and as seen from Section 23 (7) (b) of the Act, 2020, if the applicant has not fulfilled majority of the terms and conditions, he should be informed about the same and should be given an opportunity to furnish the documents before rejecting the application. But, as seen from the impugned order, the said procedure was not adopted.

10. Sufficient reasons are also not given as to why his application has been rejected. The reason shown in the order is as vague as possible.

The Hon'ble Supreme Court in M/S Kranti Associates. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors [1] held

> "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.

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[1] (2010) 9 SCC 496

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).

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".

The Hon'ble Supreme Court in Asst. Commissioner vs M/S.Shukla & Brothers [2]held as follows:-

"The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.

In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to

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[2] [(2010) 4 SCC 785]

give reasons, absence whereof could render the order liable to judicial chastise. Thus, it will not be far from absolute principle of law that the Courts should record reasons for its conclusions to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.

12. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer

to certain judgments of this Court as well as of the High Courts which have taken this view.

13. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders. In the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], the Supreme Court held as under:-

"6. ......If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in

the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ..."

14. In the case of Mc Dermott International Inc. v. Burn Standard Co. Ltd. and Ors. (2006) SLT 345, the Supreme Court clarified the rationality behind providing of reasons and stated the principle as follows:-

". . . Reason is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded. The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the Arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in Poyser and Mills' Arbitration in Re, `proper adequate reasons'. Such reasons shall not only be intelligible but shall be a reason connected with the case which the Court can see is proper. Contradictory reasons are equal to lack of reasons. . . ."

15. In Gurdial Singh Fijji v. State of Punjab [(1979) 2 SCC 368], while dealing with the matter of selection of candidates who could be under review, if not found suitable otherwise, the Court explained the reasons being a link between the materials on which certain conclusions are based and the actual conclusions and held, that where providing reasons for proposed supersession were essential, then it could not be held

to be a valid reason that the concerned officer's record was not such as to justify his selection was not contemplated and thus was not legal. In this context, the Court held -

"... "Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions. The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was "not found suitable" is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List."

16. This principle has been extended to administrative actions on the premise that it applies with greater rigor to the judgments of the Courts. In State of Maharashtra v. Vithal Rao Pritirao Chawan [(1981) 4 SCC 129], while remanding the matter to the High Court for examination of certain issues raised, this Court observed:

". . . It would be for the benefit of this Court that a speaking judgment is given".

11. First ground of rejection is too vague and this Court is unable to understand the meaning of that ground. Even the Assistant Government Pleader is unable to explain the same. Assuming for a moment that the first ground of rejection is on the ground that the recommendation of the Assistant Executive Engineer is not there, he should have given an

opportunity to explain or submit the same in accordance with Section 23(7) (b) of the Act of 2020. But, the same is not done.

12. The basic principle of law is that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor Vs. Taylor (1875) 1 Ch.D. 426 which was followed by Lord Roche in Nazir Ahmad Vs. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under:

> "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

This rule has since been approved by the Hon'ble Supreme Court in Rao Shiv bahadur Singh & Anr. Vs. State of Vindhya Pradesh 1954 SCR 1098 = AIR 1954 SC 322 and again in Deep Chand Vs. State of Rajasthan 1962 (1) SCR 662 = AIR 1061 SC 1527. These cases were considered a by a Three-Judge Bench of the Hon'ble Supreme Court in State of Uttar Pradesh Vs. Singhara Singh & ors. AIR 1964 SC 358 = (1964) 1 SCWR 57 and the rule lay down in Nazir Ahmad's case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a salutary principle of administrative law.

13. Second ground of rejection is that the Mandal Level Committee granted too many deemed approvals. Even this

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ground is very vague and on this ground the approvals should not have been rejected at all.

14. In view of the facts and circumstances of the case and following the principles laid down by the Hon'ble Supreme Court in the above cited cases, the writ petition is allowed and the impugned rejection order is set aside and the appropriate authority is directed to deal with the application filed by the petitioner on 16.6.2021 in accordance with the Act of 2020 and the Rules of 2020 and communicate the same to the petitioner. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this case shall stand closed.

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KONGARA VIJAYA LAKSHMI, J

Date: 12.8.2021
Note: LR copy to be marked
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