

RESERVED
AFR

Case :- MISC. BENCH No. - 2638 of 2010

Petitioner :- Praveen Kumar Jain S/O Late Kailash Chand Jain (Tax)

Respondent :- State Of U.P. Thru Principal Secretary Tax & Registration and another.

Counsel for Petitioner :- Dhruv Mathur,S.P.Singh,Vanshaja Shukla

Counsel for Respondent :- C.Sc..

Hon'ble Devi Prasad Singh,J.

Hon'ble Rajiv Sharma,J.

(Delivered by Hon'ble Devi Prasad Singh, J)

1. Instant writ petition under Art. 226 of the Constitution of India has been preferred being aggrieved with the impugned order/circular dated 6.8.2003, issued by the District Magistrate, Lucknow in pursuance to the power conferred by Section 4, read with Section 5 of Indian Stamp Act, 1899, broadly on the ground that it has been issued arbitrarily without following due process of law.

2. The petitioner has executed a sale-deed on 17.3.2004 to the extent of his share in favour of Tanisha Builders for a consideration of approximately Rs.20 lacs. M/s. Tanisha Builders moved an application under Section 143 of the U.P. Z.A.L.R. Act for change of land use which was allowed by the Sub Divisional Magistrate, Sadar, Lucknow vide order dated 19.2.2007 and later on it was sold to M/s. Omax Limited for a consideration of Rs.328 per sq. metre. At the time of execution of the sale-deed, stamp duty was paid in accordance with circle rate.

3. By circular dated 1.4.2002, circle rate with regard to area in question was fixed at the rate of Rs.8 lacs per acre or 197.63 per square metre. By another circular dated 6.8.2003, the circle rate was enhanced to Rs.46.57 lacs per acre or 1150 per square metre. By another circular dated 16.6.2014, the circle rate of the agricultural land was reduced to Rs.20 lacs per acre or Rs.191 per square metre. The petitioner received a notice dated 27.5.2009 from the Income Tax Department for fresh income assessment under Section 50(c)(1) of the Income Tax Act. On 4.12.2009, an order was passed under the aforesaid provisions of the Income Tax Act

and the value adopted for the purpose of stamp duty is deemed to be full value of sale consideration received or accrued as a result of capital assets, i.e. the plot in question of the agricultural land. The order further provides that the duty assessment shall be done on the basis of the duty payable in pursuance to the circular issued under Stamp Act. Accordingly, the income tax imposed amount of Rs.96,38,778/- as capital gain which accrued on a sale consideration of merely 20 lacs of the said transaction and the capital gain was calculated to be of Rs.31,38,389/-. After receipt of the notice and assessment order under Section 50(c)(1) of the Income Tax Act, the petitioner came to know that while issuing the circular with regard to circle rate dated 6.8.2003, the respondent No.2 has not applied mind to the statutory mandate and acted in an arbitrary manner. The steep increase of the minimum value within fifteen months from the date of earlier circular in circle rate of the District Magistrate is alleged to be done by arbitrary exercise of power without taking into account the statutory mandate contained in Rule 4(a) of U.P. Stamp (Valuation of Property) Rules, 1997.

4. The impugned circular dated 6.8.2003 seems to be issued by the District Magistrate, Lucknow revising circle rate after fifteen months from the earlier circular dated 6.8.2003. For convenience, the impugned circular dated 6.8.2003 contained in Annexure No.1 to the writ petition is reproduced as under :

क्रमांक	संशोधित आदेश
	उत्तर प्रदेश सरकार कर एवम् संस्थागत अनुभाग की अधिसूचना संख्या एस0आर0 2114/11-67-130/66 लखनउ दिनांक जुलाई 08, 1667 के अन्तर्गत प्रदत्त अधिकारों के अधीन जनपद लखनउ में कृषि/वाणिज्यिक एवं औद्योगिक भूमि/भूखण्ड एवं भवनों के मूल्यांकन एवं स्आम्प शुल्क की अदायगी हेतु स्आम्प (सम्पत्ति का मूल्यांकन) नियमावली 1667 के प्राविधानों के अन्तर्गत दिनएंक 01-04-2002 से प्रस्थापित दरों को संशोधित करते हुये निम्न दरें प्रस्थापित की जाती है, जो तत्काल प्रभाव से लागू होगी ।
01	नगर निगम सीमा के अन्तर्गत स्थित समस्त भूमि का मूल्यांकन उस क्षेत्र हेतु निर्धारित आवासीय/स्ववसायिक दर से किया जायेगा ।
02	थदनांक 4-7-2002 को निर्गत आदेश में आंशिक संशाधन करते हुये मुख्य मार्गों के दोनों तरफ 25 मीटर तक स्थित सम्पत्तियों का मूल्यांकन उक्त क्षेत्र हेतु निर्धारित व्यवसायिक दर से किया जायेगा । परन्तु यदि कोई सम्पत्ति मुख्य मार्ग से सटी है और उसका विस्तार 26 मीटर से अधिक है तो पूरे यूनिट का मूल्यांकन व्यवसायिक दर से ही किया जायेगा । अपर जिलाधिकारी (वि0 एवं रा0) लखनउ द्वारा निर्गत आदेश दिनांक 20-07-2002 समाप्त किया जाता है ।

03	समस्त विक्रय विलेख के साथ सम्पत्ति के नक्शों के साथ-साथ रूट चार्ट/की प्लान प्रप के साथ (निकटतम मुख्य मार्ग से बिक्रीत सम्पत्ति तक पहुंचने का मार्ग) प्रप के साथ संलग्न किया जाना आवश्यक होगा ।
04	लखनउ विकास प्राधिकरण को अलीगंज योजना के समस्त सेक्टर में स्थित आवासीय भूखण्डों का मूल्यांकन रू0 4,000 प्रति वर्ग मीटर, प्रति माह की दर से आंकलित किया जायेगा ।
05	आलमबाग क्षेत्र के कानपुर रोड के दोनों ओर टेढ़ी पुलिया चौराहा से नहर तक स्थित किसी भी मोहल्ले या वार्ड में स्थित होने पर आवासीय भूखण्ड का मूल्यांकन रू0 3,500 प्रति वर्ग मीटर, व्यवसायिक भूखण्ड रू0 70 प्रति वर्ग मीटर, प्रति माह की दर से आंकलित किया जायेगा ।
06	प्रलेख में दी गई चौहद्दी में सड़क होन पर उक्त सड़क का नाम व प्रश्नगत सड़क कहां से कहां जाती है उल्लिखित करना आवश्यक होगा । साथ में ही उक्त प्रलेख द्वारा अन्तरित सम्पत्ति को व्यवसायिक निकटतम सड़क से दूरी को उज्जलेख करना आवश्यक होगा ।
07	मूल्यांकन सूची में दिये गये कार्नर शब्द के साथ-साथ किसी सम्पत्ति के दो मार्गों पर स्थित होने पर सम्पत्ति का मूल्यांकन प्रभावी दरों से 10 प्रतिशत बढ़ा कर किया जायेगा और उक्त दोनों सड़कों में से कोई सड़क 6 मीटर से अधिक होती है तो 15 प्रतिशत बढ़ा कर मूल्यांकन किया जायेगा ।

ह0

शैलेश कुमार सिंह
अपर जिलाधिकारी (वि0 एवं रा0)
लखनउ

डा0 नवनीत सहगल
जिलाधिकारी, लखनउ

5. A plain reading of the circular impugned reveals that the respondent No.2 has revised the earlier circular dated 1.4.2002 and 4.7.2002 enhancing the circle rate manifold. Under the Act, the government has got power to frame Rules. In pursuance thereof, the State Government has framed Rules, namely Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, in short 1997 Rules.

6. Rules 4 and 5 of 1997 Rules confer power on the State Government to issue appropriate order or circular for fixation of minimum value of an instrument of agriculture as well as non-agricultural land. For convenience, Rules 4 and 5 of the Rules are reproduced as under :

Rule-4. Fixation of minimum rate for **valuation** of land construction value of non-commercial building and minimum rate of rent of commercial building.- (1) The Collector of the district shall biennially, as far as possible, in the month of August, fix the minimum value per acre/per square meter of land, the minimum value per square meter of construction of non-commercial building and the minimum monthly rent per square meter of commercial building situated in different parts of the district taking into consideration the following facts:

(a) in case of land-

(i) classification of soil

(ii) availability of irrigation facility,

(iii) proximity to road, market, bus, station,

railway station, railway station factories,
hospitals and government offices and

(iv) location with reference to its situation
in urban area, semi urban area or country
side

(b) In case of non-commercial building:

(i) cost of material used in the construction
of building

(ii) labour charges

(iii) type of construction, age, and
depreciation of building.

(c) In case of commercial building-

(i) prevailing rent in locality and (ii) nature
of economic activity in the locality.

(2) The Collector of the district may suo moto or on an application made to him in this behalf, on being satisfied about the incorrectness of the minimum value of land or of the construction of non-commercial building, or the minimum rent of a commercial building fixed by him under sub-rule (1), for reasons recorded in writing, revise the same within a period of two years from the date of fixation of minimum value or rent, as the case may be.

(3) The Collector of the district shall after fixing the minimum value per acre/per square meter of land, and of the construction of non commercial building and the minimum rent per square meter of commercial building under sub-rule (1), send a statement in three part to the Registrar, the first part of such statement shall contain the division of the district under his jurisdiction, into urban area, semi-urban area and the country side, second part shall specify the minimum value of land situated in different parts of the sub-district and the third part shall contains, in the case of non-commercial building the minimum value of construction and in the case of commercial building the minimum rent fixed under sub- rule (1).

(4) The Registrar shall supply copies of statement mentioned in sub-rule (3) to the Sub-Registrars under his control and shall also forward a copy of the same to the Inspector General of Registration, **Uttar Pradesh**.

(5) Every Registering Officer shall cause a copy of the above statement to be affixed on the notice board outside the registering offices.

5. Calculation of minimum value of land, grove, garden and building.--

For the purposes of payment of **stamp** duty, the minimum value of immovable **property** forming the subject of an instrument shall be deemed to be such as may be arrived at as follows :--

(a) In case of land	Minimum value
---------------------	---------------

Where agricultural or non-agricultural	Area of land multiplied by minimum value fixed by Collector or the district under Rule 4.
(b) In case of grove or garden	Minimum value of the land as worked out in the manner laid down in Clause (a) plus the value of the trees standing thereon worked out on the basis of the average price of the trees of the same nature, size and age prevailing" in the locality on the date of the instrument;
(i) if assessed to revenue	
(ii) if not assessed to revenue or is exempted from it and is rented.	Twenty times the annual rent plus the premium, if any, plus the value of trees standing thereon determined in accordance with sub-clause (i);
(iii) if not assessed to revenue or is exempted from it, and profit has arisen during three years immediately preceding the date of the instrument.	Twenty times the average annual profit plus the value of the trees standing thereon determined in accordance with sub-clause (i);
(iv) if no assessed to revenue or exempted from it and no profit has arisen during the three years immediately preceding the date of the instrument.	Twenty times the assumed annual profit plus the value of the trees standing thereon determined in accordance with sub-clause (i).
(c) Case of buildings	
(i) Non-commercial building.	Minimum value of land whether covered by the construction or not, which is subject matter of instrument as worked out under Clause (a) plus the value of construction of building arrived at by multiplying the constructed area of each floor of the building by the minimum value fixed by

	the Collector of the district under Rule 4;
[(ii) Commercial building	Three hundred times the minimum monthly rent of the building, which is the subject matter of the instrument, calculated by multiplying the constructed area of each floor of the building with the minimum rent fixed by the collector of the district under Rule 4.]

7. A plain reading of Rule 4(a) shows that for fixation of minimum value of land, the Collector has to look into several factors like classification of soil, availability of irrigation facility, proximity to road, market, bus station, railway station, factories, educational institutions, hospitals and government offices etc. Further, the Collector has to see the location of the land with reference to its situation in urban area, semi urban area or countryside. The provisions contained in Rule 4 read with Rule 5 are mandatory and binding. Unless the Collector applies his mind keeping in view the condition given in 1997 Rules(supra) while providing circle rate, the circular issued thereon shall not be lawful and shall amount to an arbitrary exercise of power.

8. A plain reading of the provision contained in Rule 4 read with Rule 5 shows that the Collector or the Government does not have got unfettered power to increase minimum value of immovable property forming the subject of an instrument mechanically but the power is based on certain conditions which require necessary exercise by the Collector while enhancing or decreasing the stamp value through circle rate.

Once an order or circular is passed/issued providing minimum value through circle rate, then it does not confer power on the State Government/Collector to increase circle rate every year or at regular interval without making necessary exercise in terms of Rule 4 and Rule 5.

The Government/Collector to assign reason as to why it wants to increase or decrease the circle rate which makes the citizens life dearer or costly. The steep increase in circle rate affect the quality of life which is fundamental right protected by Article 21 of the Constitution of India.

9. It is well settled proposition of law that while interpreting statutory provisions, Courts/authority should consider each and every word, para, section and the statute as a whole. No interpretation should be given to a statutory provision which makes the provision or a part thereof redundant vide 2002 (4) SCC 297, Grasim Industries Limited Vs. Collector of Customs; 2003 SCC (1) 410, Easland Combines Vs. CCE; 2006 (5) SCC 745, A.N.Roy Vs. Suresh Sham Singh and 2007 (10) SCC 528, Deewan Singh Vs. Rajendra Prasad Ardevi.

10. In the present case, at the face of record, the Collector while issuing the impugned circular with regard to valuation of stamp has amended the earlier one mechanically without assigning any reason. The circular does not reflect that the Collector has applied mind to the conditions enumerated in Rules 4 and 5 of 1997 Rules (supra). Further, the Collector has not assigned reasons which has necessitated to increase the circle rate.

11. This Court in a case reported in **(2004)1 AWC 899(All) Hajari Lal Sahu versus State of U.P and others** held that Rule 4 of 1997 Rules is relevant consideration for determining circle rate and it must be considered. Circle rate cannot be revised on the basis of irrelevant factors for determination of minimum value.

12. In **(1999)5 SCC 62 Ramesh Chand Bansal and others versus District Magistrate/Collector, Ghaziabad and others**, Hon'ble Supreme Court held that the circle rate fixed by the Collector is not final and it is the prima facie determination of rate for the area concerned. The circle rate does not take away the right of citizen to show that the actual valuation is

less than circle rate.

13. In a case reported in **(2007)14 SCC 339 State of Rajasthan versus Khandaka Jain Jewellers**, Hon'ble Supreme Court held that the valuation should be assessed on the basis of market value prevailing at the time of execution of sale-deed.

14. A perusal of the impugned circular at the face of record shows that the District Magistrate/Collector has not exercised jurisdiction while issuing the amended circular keeping in view the letter and spirit of Rules 4 and 5 of the Rules (supra). The impugned circular/order passed by the District Magistrate should reflect that the power has been exercised keeping in view the letter and spirit of Rules 4 and 5 and the reasons to increase or decrease the circle rate.

15. Learned counsel for the State while defending the impugned circular submits that all relevant considerations have been done by the District Magistrate while issuing the impugned circular. Argument seems to be an after thought.

16. A Constitution Bench of Supreme Court in the case reported in **(1978)1 SCC 405 Mohinder Singh Gill versus Chief Election Commissioner, New Delhi and others** held that in case the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons assigned in the impugned order or circular and it cannot be supplemented by fresh reason in the shape of affidavit.

17. In the present case, since the impugned circular with regard to circle rate issued by the District Magistrate does not contain even a whisper with regard to application of mind in terms of Rules 4 and 5(supra), the statutory authority does not appear to have discharged his/her statutory obligation in terms of Rules 4 and 5.

18. It is well settled proposition of law that in case the authority is assigned to do certain thing in accordance with the statutory provisions,

then it must be done in the manner provided in the Act or statute or rule and not otherwise vide Nazir Ahmed Vs. King Emperor, AIR 1936 PC 253; Deep Chand Versus State of Rajasthan, AIR 1961 SC 1527, Patna Improvement Trust Vs. Smt. Lakshmi Devi and others, AIR 1963 SC 1077; State of U.P. Vs. Singhara Singh and other, AIR 1964 SC 358; Barium Chemicals Ltd. Vs. Company Law Board AIR 1967 SC 295, (Para 34) Chandra Kishore Jha Vs. Mahavir Prasad and others, 1999 (8) SCC 266; Delhi Administration Vs. Gurdip Singh Uban and others, 2000 (7) SCC 296; Dhanajay Reddy Vs. State of Karnataka, AIR 2001 SC 1512, Commissioner Of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and others, 2002 (1) SCC 633; Prabha Shankar Dubey Vs. State of M.P., AIR 2004 SC 486 and Ramphal Kundu Vs. Kamal Sharma, AIR 2004 SC 1657. Taylor Vs. Taylor, (1876) 1 Ch.D. 426; Nika Ram Vs. State of Himachal Pradesh, AIR 1972 SC 2077; Ramchandra Keshav Adke Vs. Govind Joti Chavare and others, AIR 1975 SC 915; Chettiam Veetil Ammad and another Vs. Taluk Land Board and others, AIR 1979 SC 1573; State of Bihar and others Vs. J.A.C. Saldanna and others, AIR 1980 SC 326, A.K.Roy and another Vs. State of Punjab and others; AIR 1986 SC 2160; State of Mizoram VS. Biakchhawna, 1995 (1) SCC 156.

DISCRETION

19. It is trite law that when the statute left to any person or statutory authority to do certain thing, then it must be done with sound discretion keeping in view the letter and spirit of statutory mandate and not mechanically. Hon'ble Supreme Court in a case reported in **(2004)2 SCC 590 Union of India versus Kuldeep Singh** has considered the exercise of discretionary power and held as under :

21. When any thing is left to any person, Judge or magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlin's Law Dictionary) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will:

the liberty of power of acting without other control than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore whoever hath power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary).

22. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colorable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (Per Lord Halsbury, L.C., in *Sharp v. Wakefield*,).

23. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore where the legislature concedes discretion it also imposes a heavy responsibility.

"The discretion of a Judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said (Lord Camden, L.C.J., in *Hindson and Kersey* .)

20. According to *Corpus Juris Secundum*, Vol. 27, page 289, discretion has been defined as under :

"The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate."

21. Lord Halsbury LC in *Susannah Sharp versus Wakefield* (1891) AC 173 at p. 179 has interpreted the discretion as under :

“Discretion means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : Rooke's case according to law, and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. “

22. In **AIR 1967 SC 1427 Jaisinghani versus Union of India**, Hon. Supreme Court held that the discretion is governed by rule and it must not be arbitrary, vague and fanciful.

23. In **AIR 2001 SC 2552 Dhurandhar Prasad Singh versus Jai Prakash Univerity**, Hon. Supreme Court held that the discretion undoubtedly means judicial discretion and not whim, caprice or fancy.

24. In **AIR 2004 SC 1581, National Insurance Co. Limited versus Keshav Bahadur**, Supreme Court held that the word discretion standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste, evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the Legislature concedes discretion it also imposes a heavy responsibility.

25. In **(1991) 3 SCC 239 U.P. State Road Transport Corporation versus Mohd. Ismail and others**, a Constitution Bench of Supreme Court held that the statutory discretion cannot be shattered by self created rule or policy. Relevant portion from para 13 is reproduced as under :

“13.....It may be stated that the statutory discretion cannot be fettered by self-created rules or policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion it cannot, however, deny itself the discretion which the statute requires it to exercise in individual cases. The concerned authority of the Corporation, therefore, notwithstanding, the said circulars are required to consider the cases of retrenched drivers for alternative jobs.”

26. Keeping in view the aforesaid backdrop and interpretation given with regard to exercise of discretionary power, there appears to be no room of doubt that the respondent No.2 exercised discretion while amending the circular with regard to minimum valuation mechanically without application of mind to the mandate flowing from Rule 4 read with Rule 5 of 1997 Rules, hence suffers from vice of arbitrariness and hit by Art. 14 of the Constitution of India.

POLICY DECISION

27. While opposing the writ petition, the State Counsel states that being policy decision, the court should not interfere with regard to circle rate. Argument advanced by the learned State counsel seems to be misconceived. Whenever a power is conferred to the statutory authority to exercise discretion in pursuance to the statutory provision, then it must be done keeping in view the letter and spirit of statutory mandate. Exercise of discretion in violation of statutory mandate shall not save the decision taken under the garb of policy decision. It is trite law that if a policy decision is capricious, arbitrary, mala fide, court's power to judicial review shall not be fettered vide **(1997)7 SCC 592 M.P. Oil Extraction versus State of M.P., 1980(Supp) SCC 559 Col. A.S. Sangwan versus Union of India.**

STATUTORY CONDITION

28. Apart from above, Rule 4 read with Rule 5 contains the conditions which shall be considered by the District Magistrate/Collector while issuing circular or passing order for the valuation of land for the purpose of stamp duty. While taking decision for issuing a circular under Rule 4 read with Rule 5, Collector has to assign reasons for enhancement of circle rate. What prompted the District Magistrate/Collector to enhance the circle rate must emerge from a plain reading of the circular/order including office note. No reason has been assigned in the impugned circular of the respondent No.2 as to what prompted him to enhance the circle rate exorbitantly.

29. A Full Bench of this Court has considered the importance of reason in a case reported in **2013(11)ADJ 22 Ms. Ranjana Agnihotri and others[P.I.L.] versus Union Of India Through Secy. Ministry of Home Affairs & others** (judgment delivered by one of us, Justice Devi Prasad Singh) after considering various pronouncements of Hon'ble Supreme Court, held that the reason is the part and parcel of Article 14 of the Constitution of India. Relevant portion from the judgement of Ms. Ranjana Agnihotri (supra) is reproduced as under :

“190. Learned author (De Smith's Judicial Review, 6th Edition) has rightly held that failure to give adequate reasons may indicate that a decision is irrational. Learned author observed as under :

“The beneficial effects of a duty to give reasons are

many. To have to provide an explanation of the basis for their decision is a salutary discipline for those who have to decide anything, that adversely affects others. The administration in that it encourages a careful examination of the relevant issues, the elimination of extraneous considerations, and consistency in decision-making. The giving of reasons increases public confidence in the decision-making process. The giving of reasons can also render it easier to determine if a decision is irrational or erroneous.”

191. Sir W.W.R. Wade in his famous treatise “Administrative Law” (10th Edition) observed :

“The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely—that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. “

192. Learned author(supra) referred a case reported in Breen versus Amalgamated Engineering Union (1971)2 QB 175 where Lord Denning MR has relied upon the earlier judgment of House of Lords, Padfield versus Minister of Agriculture, Fisheries and Food and held as under :

“The importance of the House of Lords' decision was underlined by Lord Denning MR.

The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this : the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by Padfield v. Minister of Agriculture, Fisheries and Food which is a landmark in modern administrative law.”

193. In The United States, the Courts from time to time insisted upon recording of reasons in the decision taken by administrative authority. In Phleps Dodge Corporation versus National Labour Relations Board (1940)85 Law Ed 1271 at p. 1284, it has been held that the authority should give clear indication that it has exercised the discretion with which it has been empowered because administrative process will best be vindicated by clarity in its exercise.

194. In Securities and Exchange Commission versus Chenery Corporation (1942)Law Ed 626 at p. 636, it has been held that

orderly functioning of the process of the administrative agency be clearly disclosed and adequately sustained.

195. The Federal Administrative Procedure Act, 1946 prescribes the basic procedural principles which are to govern formal administrative procedures and contained an express provision (Section 8(b)) to the effect that all decisions shall indicate a statement of findings and conclusions as well as reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record.

196. The Supreme Court in a case reported in **AIR 1976 SC 1785 Seimens Engineering and Manufacturing Company of India Limited versus Union of India and another**, 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.”

197 In one another case reported in **(2004)5 SCC 568 State of Orissa versus Dhaniram Lunar**, their Lordships of Supreme Court held as under :

“8..... 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 justice is spelling out reasons for the order made.....”.

198. In **Mc Dermott International Inco. Versus Buru Standard Co. Limited and others (2006) SLT 345**, their Lordships observed as under :

“...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.....”

199. A Division Bench of this Court in a case reported in **2007 LCD 1266 Vijai Shanker Tripathi versus Hon'ble High Court of Judicature at Allahabad** has considered the concept of exercise of discretionary power by the State or its authorities including the High Court and held that every administrative order passed by authorities must fulfil the requirement of Art. 14 of the Constitution.

200. Supreme Court in a case reported in **JT 2010(9) SC 590 M/s. Kranti Associates Private Limited and another versus Sh. Masood Ahmed Khan and others** held that a cryptic order shall deem to suffer from vice of arbitrariness. An order passed by quasi judicial authority or even administrative authority must speak on its face.

In a case reported in **2010(4) SCC 785 CCT versus Shukla and Brothers**, their Lordships held that the reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. To quote relevant portion from the judgment (supra), to quote :

“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 principle 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.”

201. The aforesaid view with regard to reasoned order by authorities which include judicial and quasi judicial authorities has been consistently reiterated by the Supreme Court in earlier judgments. Their Lordships of Hon'ble Supreme Court held that the authorities have to record reasons, otherwise it may become a tool for harassment vide **K.R. Deb versus The Collector of Central Excise, Shillong, AIR 1971 SC 1447; State of Assam and another versus J.N. Roy Biswas, AIR 1975 SC 2277; State of Punjab versus Kashmir Singh, 1997 SCC (L&S) 88; Union of**

India and others versus P. Thayagarajan, AIR 1999 SC 449; and Union of India versus K.D. Pandey and another, (2002)10 SCC 471.

In a recent judgment reported in **AIR 2013 SCW 2752 Union of India versus Ibrahimuddin(para 33)**, their Lordships of Hon'ble Supreme Court reiterated that every order passed by the administrative authority, judicial or quasi judicial must be a reasoned order.

30. The impugned circular does not assign any reason for enhancement of circle rate. It also does not contain any reason as to how and in what manner the authorities applied mind keeping in view the letter and spirit of Rule 4 read with Rule 5 of the Rules (supra). Accordingly, it suffers from vice of arbitrariness and hit by Art. 14 of the Constitution of India.

31. The steep and mechanical increase or decrease in circle rates makes the life dearer. In a country where more than 35% population is below the poverty line, the power conferred by Stamp Act to provide circle rate for the purpose of minimum evaluation of property to ascertain stamp duty increases the living cost where the citizen is the ultimate sufferer. In a welfare society, the District Magistrate or the Collector does not have got power to discharge their obligation mechanically without assigning reason, more so where the citizens have to pay from their pocket with regard to sale and purchase of property.

32. In a welfare State, the Government is supposed to act or work in a just and fair manner and people should not be burdened to pay stamp duty by increase of circle rate every year mechanically. It should not be forgotten that the essential requisite for the levy of stamp duty by the State is the existence of an instrument evidencing a transaction by the citizens. The transaction is convened to the instrument whereby property is transferred. The provision does not seem to confer a power to increase stamp duty mechanically to generate revenue by the State.

33. Once a circle rate is provided after making necessary exercise in pursuance to Rules (supra), there appears to be no reason to revise it mechanically, that too without taking note of the ground realities and the poverty ridden society. I reproduce a couplet of a great poet Henry Lawson :

“I hate this grinding poverty,
To toil, and pinch, and borrow,
And be for ever haunted by
The spectre of to-morrow.

It breaks the strong heart of a man,
 It crushes out his spirit,
 Do what he will, do what he can,
 However high his merit!

I hate the praise that Want has got
 From preacher and from poet,
 The cant of those who know it not
 To blind the men who know it.
 The greatest curse since man had birth,
 An everlasting terror:
 The cause of half the crime on earth,
 The cause of half the error.

All political ideologies and administrative necessities shall crumble down in case no care is taken by the government and its instrumentalities to the financial capability of poor peoples. It is the poverty which has been exploited by terror groups or "vote catchers". Life should not be made overburdened by swift change of law/circle rate to generate fund without utilising the available resources honestly with fairness to the last penny. Moreover, the purpose of Stamp Act does not seem to generate revenue as regular source of revenue like tax statutes and other alike enactments. Decision must be conscious keeping in view the ground financial capacity/problem of the commoners or lower and middle class of society who constitute the bulk of the country.

33. To sum up, while issuing the circular or order in pursuance to Stamp Act read with 1997 Rules(supra) framed thereunder, it shall be obligatory on the part of the Collector/District Magistrate to assign reason and do necessary exercise in view of Rule 4 read with Rule 5 of the Rules to ascertain necessity to increase or decrease circle rate. Since the impugned order does not contain any reference to the exercise done with reference to Rule 4 read with Rule 5, it does not seem to be sustainable and violative of statutory mandate.

34. It appears that the Collectors/District Magistrates all over the State changed the circle rates mechanically without taking a note of the legal proposition discussed hereinabove, which does not seem to be justified. It shall be appropriate that the Chief Secretary/Principal Secretary, Revenue should circulate the present judgment to all the District Magistrates /Collectors for future guidance during the course of revision of circle rates. Henceforth, circle rate shall not be revised except keeping in view the

observation made in the body of present judgment.

ORDER

In view of above, the writ petition deserves to be and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned circular/order dated 6.8.2003 (Annexure-1 to the writ petition) with all consequential benefits. The impugned circular is also declared illegal and inoperative.

Let a copy of the present judgment be sent to the Chief Secretary, as well as the Principal Secretary, Revenue of Government of U.P for compliance and circulation to all concerned within a period of one month and submit a compliance report immediately thereafter.

No order as to costs.

(Justice Rajiv Sharma)

(Justice Devi Prasad Singh)

January 19, 2015.

k kb/