Reasons in Administrative Adjudication

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Giving of reasons is one of the fundamentals of good administration. If a judge decides a case by tossing a coin though after hearing all the evidence and submission, and having no bias or personal interest in the outcome of the case, his decision nevertheless cannot be accepted. Reasons are the life of decisions in administrative decision-making. Failure to give reasons or giving reasons not germane would be fatal to decisions. Finally, it affects credibility, respectability and acceptability of administrative process.

Jurisprudentially, reasoning is a process of thought aimed at reaching or justifying a conclusion. A reasoned decision is an intelligible order - an order which speaks - its own story. Reasons, observes Beg. J., "are the link between the material considered and the actual conclusion"[1]. Similarly, in *Maharashtra State Board of Secondary Education Vs. K.S. Gandhi*,[2] it was held that the reasons are harbinger between the mind of the maker of order to the controversy in question and the decision or conclusion arrived at.

II. The importance of giving of reasons in administrative adjudication has long been recognised as a desirable course of action by the Committee on Ministers Powers (1932); Franks Committee (1955) in England and Bland Committee in Australia. It may further be beneficial to know that the requirement to provide reasons in writing to the person whose rights have been adversely affected by administrative action has been accorded a fundamental right under the Constitution of the Republic of South Africa, 1996 under Sub-Section 2 of Section 33. The Supreme Court in *Radheshyam Vs. State of M.P.*[3], held that the requirement to record reasons was based on public policy so as to allay any misgivings that might arise in the mind of the public.

1. *Union of India Vs. M.L. Kapoor,* AIR 1974 SC 87.
2. (1991) 2 SCC 716.
3. AIR 1959 SC 107.

Importance of giving reasons is as follows:-

1. It provides considerable assurance that the decision will be better as a result of its being properly considered.

2. It enables the party to plan for appeal / revision if such right exists.

3. It will make a tribunal more amenable to the supervisory jurisdiction of the courts, where the administration has abused its power, acted on irrelevant considerations, *Ultra- Vires* and not in accordance with the law.

4. It is likely to expose the attitude of the public official. He will be worried of his action and try to avoid giving the impression of being arbitrary or non-attentive.

5. It will inspire public confidence in the process of law. It was noted in an English case that even though a decision may be perfectly correct, if a party was not given reasons he "was left with the real grievance that he was not told why the decision has been made".

6. It will also provide additional guidance to those who advice parties as to their future conduct.

7. Above all, it will help in preserving the rule of law and to make justice appear to be seen.

Arguments may be advanced against the requirements of giving of reasons as follows:-

1. It would impose additional administrative burdens and might well be an undue drain on the resources of an administration.

2. It may hinder the administrative efficiency.

3. It may effect the manner in which the administrative discretion is exercised.

However, none of these considerations, it is submitted, deserves to be given due weight for the reasons as below:-

1. The consideration of administrative expediency should not mitigate fairness to the individual. It is so because convenience and justice are often not on speaking terms.

2. That giving of brief reasons does not take long.

III. Reasons: its Basis

1. The Rule of Law
2. Justice should be seen to be done.
3. Arts, 32, 136,226 and 227 of the Constitution.
4. Natural Justice.

However, Mr. Seervai, a learned commentator on the constitutional law, argues that none of the basis mentioned above is sound.[4]

It is, indeed, difficult to agree with Mr. Seervai in the light of the observations of Committee on Ministers' Power that the observance of the principles of natural justice is implicit in the rule of law and the rule of law expressed in the principles of natural justice requires giving of reasons in the administrative adjudications. Further the International Congress of Jurists (1959) II at 6, emphasised that:-

> "it will further the rule of law if the executive is required to formulate its reasons when reaching its decision of a judicial or administrative character and affecting the rights of individual".

IV. Important Cases

In *Harinagar Sugar Mills Vs. Shyam Sunder Jhunjhunwala*[5], it was held that the recording of reasons are essential where Central Government acts as a tribunal exercising judicial power and exercise of such power is subject to the jurisdiction of the Supreme Court. In *Bhagat Raja Vs. Union of India*[6], giving of reasons was emphasised by the Supreme Court. In this case, the Central Government acting under Rule 55 of the Mineral Concession Rules, affirmed the order of the State

4. Constitution of India, 1976. pp. 956-959.
5. AIR 1961 SC 1699.
6. AIR 1967 SC 1606.

Government which has rejected the appellant's application for grant of a mining lease. No reasons were given by any of the governments. Quashing the order the Supreme Court observed that "where the lower authority itself fails to give any reason other than that the successful applicant was an old lessee" and the reviewing authority even does not refer to that ground the Supreme Court has to grope in the dark for finding the reasons for upholding or rejecting the decision. However, reasons ought to be given by the appellate authority when it is endorsing the order of the lower authority where the order of the lower authority contains several reasons some of which are good and some bad.

The proposition that the appellate body should give its own reasons even though it affirms the reasoned decision of the lower authority was established in *Travancore Rayons Vs. Union of India*[7]. In this case the appellate company was engaged in producing certain excisable items, an excise duty was imposed by the Superintendent of Central Excise. The company claimed that the item was not dutiable. Plea was not accepted then company appealed to the Collector of Customs. The Collector gave hearing to the company but rejected the appeal on the basis of the report of the chemical examiner. The Company invoked the revisional jurisdiction of the Central Government against the decision of the collector of customs. The Central Government affirmed the decision of the Collector of Customs. The Company filed an appeal against this order in the Supreme Court. Accepting the appeal court decided that the Central Government did not give any reasons for rejecting the revision application except stating that it `See' no justification in interfering with the decision of the Collector of Customs. In absence of the reasons, order of the Central Government was quashed.

Recently, however, doubts have been raised on the above proposition in the *Tara Chand Vs. Delhi Municipal Corporation*[8]. It was held that disciplinary authority is required to record its reasons when it differs from the conclusions arrived at by the inquiry officer. But reasons need not be recorded when it is agreeing with the

7. AIR 1971 SC 862.
8. AIR 1977 SC 567. See also *Som Datt Vs. Union of India* AIR 1969 SC 414.

findings of the enquiry officer. Academic views on the ratio of the *Tara Chand* Case is that it should be treated confined only to the disciplinary cases and it should not be accepted as laying down the general proposition and in any case *Tara Chand* has not overruled *Travancore Rayon's Case*. It appears more convincing that the reasons would be necessary in order to satisfy the courts that the appellate or revisional authority applied its mind to the relevant consideration and the decision is not contrary to law.

On the requirement of giving of reasons by the quasi-judicial bodies there seems confusion among the High Courts Judges. In *Rana Natwar Singh Vs. State of Madhya Pradesh*[9], S. 14 of M.P. Municipalities Act, 1961 authorised the State Government to remove a Councillor. The order of removal was challenged on the ground that it was "not a speaking order". This case was decided by majority of 2 to 1. Majority judges referred *Tara Chand* and followed *Som Datt*. However, the opinion expressed by minority judge following *Bhagat Raja* over *Som Datt* seems to be logical.

In *Siemens Engg. & Mfg. Co. Vs. Union of India*[10], import duty on the imported goods was levied with the rate of 20%. It was argued on behalf of the Company that on proper classification of imported items it should be only 15%. Company's claim was rejected by the Collector of Customs. It preferred appeal before the Central Government. It was also rejected without reasons. On being challenged before the Supreme Court the order was considered non- speaking and hence quashed. It was further observed that the giving of reasons in administrative adjudication is like the requirement of observing the rule of *audi alteram partem* one of the rules of natural justice.

In *Uma Chand Vs. State of M.P.*[11], the Indian Police Service (Appointment by Promotion) Act, 1955 provides for the selection of members of the State Police force for promotion to the IPS. Regulation 5(5) provides that if in the process of selection it

9. AIR 1980 M.P. 129.
10. AIR 1976 SC 1785.
11. AIR 1981 SC 1015.

is proposed to supersede any member of the State Police Service, the Selection Committee “shall record its reasons for proposed supersession". It was held by the Supreme Court that the Selection Committee was bound to give reasons. In *Ajantha Industries Vs. Central Board of Direct Taxes*[12], the exercise of power under S. 127 of the Income Tax Act, 1961 regarding transfer of a case from one place to another of the assessee, was held by the Supreme Court that the transfer order must give reasons and the reasons should also be communicated to the assessee. In *Mohammad Jafar Vs. Union of India*[13], it was observed that reasons given for taking immediate action under proviso to section 3(3) of the Unlawful Activities (Prevention) Act, 1967 must be distinct from reasons meant for imposing ban under section 3 and the same may be communicated to the affected association. It was also observed that the recording of reasons in office file is not enough. Duty to record reasons, held, also include duty to communicate such reasons to the affected party. This may be considered right approach on the law relating to the speaking order.

In *R.S.Dass Vs. Union of India,*[14] the validity of selection lists for promotion of officers from state services to the Indian Administrative Services was challenged on the ground that the Selection Committee had not recorded any reason for superseding the appellants. The service rule was amended and the requirement of recording of reasons was deleted. Supreme Court held in view of this legal change, that there was no requirement of natural justice to record reasons. In the instant case judge seems to have been swayed by the change in law and he does not appear to have considered the requirement of giving of reasons independently of the rules.

The power conferred on the appropriate government to transfer proceedings under section 33-B(1) of the Industrial Dispute Act, 1947, from one Labour Court/Tribunal to another can only be exercised by giving opportunity of pre-decisional hearing and speaking order. It was held by the Supreme Court in

12. AIR 1976 SC 437.
13. (1994) Supp. (2) SCC 1. See also *C.B. Gautam Vs. Union of India* (1993) 1 SCC 78.
14. AIR 1987 SC 593.

Management of M/S M.S.Nallay Bharat Engineering Co. Ltd. Vs. State of Bihar[15], that reasoned order is essential for a valid order of transfer of proceeding from one place to another.

In *Ku. Shrilekha Vidyarthi Vs. State of U.P.*[16], it was decided that the reasons for the order must exist even though not required to be communicated on the ground of public policy. It is important to note that this observation was made by the Supreme Court while interpreting the provisions of rule which stipulates that power may be exercised *"without assigning any cause"*. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at least the record should disclose reasons. It may not like judgment, what is necessary is that the reasons should be clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.[17]

In *M/s Star Enterprises Vs. City and Industrial Development Corporation of Maharashtra*[18],it was held by the Supreme Court, that duty to record reasons would also arises out of need of public accountability of executive action. It further enables administrative and judicial review and lend's credibility to such administrative action. In addition it was emphasised that speaking order must ordinarily be communicated to affected party unless their is specific justification for not doing so.

In *S.N. Mukherjee Vs. Union of India*[19], it was observed "...the requirement to record reason can be regarded as one the principles of natural justice which govern exercise of power of administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework where-under jurisdiction has been conferred on the administrative authority".

15. (1990) 2 SCC 48.
16. (1991) 1 SCC 212.
17. See *K.S. Gandhi Case* (1991) 2 SCC 716.
18. (1990) 3 SCC 280.
19. (1990) 4 SCC 594.

In *Mahrashtra State Board of Secondary and Higher Secondary Education Vs. K.S.Gandhi and others*[20], it was observed that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assures an inbuilt support to the conclusion/decisions reached. When an order affects the right of a citizen or a person, irrespective of the fact whether it is a quasi-judicial or administrative order and unless the rules expressly or by necessary implication excludes recording of reasons; it is implicit that the principles of natural justice or fair play require recording of germane and precise relevant reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be requirement of the rules, but at least the record should disclose reasons. It may not like a judgement. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or revisional authority disagrees, the reasons must be contained in the order under challenge.

In *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress*[21], it was observed by the Supreme Court that the procedure prescribed by Government Company or Public Corporation must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b) of Delhi Road Transport Authority (Conditions of appointment and service) Regulations, 1952, therefore confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employees without recording any reasons and without conforming to the principles of natural justice.

In *Kishan Lal Vs. Union of India*[22], the Supreme Court held that the exercise of power under section 220(2A) of the Income Tax Act, 1961 - Seeking Waiver of interest payable under section 220(2) - is of quasi-judicial nature and attracts principles of natural justice and therefore, must be made by speaking order. It should

20. *Supra.* 17.
21. AIR 1991 SC 101.
22. (1998) 2 SCC 392. See also *Hindustan Times Ltd. Vs. Union of India,* AIR 1998 SC 688.

be mentioned that though in section 220 (2A) it is not mentioned that reasons are required to be recorded. Some reasons should be recorded by the authority while disposing the application under section 220 (2A) of I.T. Act.

V. Concluding Remarks

It may be pointed out that when recording of reasons is essential for proper administration of justice or prevention of miscarriage of justice then it would be difficult to agree that it will not apply to the purely administrative orders. Justice Bhagwati's view appears to be more rational when he says in *Siemens* case that the requirement of giving reasons is like *audi alteram partem* and it should also be applied with all flexibility inherent in the concept of natural justice. This is a high time to treat the requirement of recording of reasons as one of the requirements of the principles of natural justice essential to ensure application of mind, to enhance public accountability of administration and to promote the culture of good governance.

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