

A.F.R.**Court No. - 21****Case :-** WRIT - C No. - 25502 of 2019**Petitioner :-** Ahmad Ullah**Respondent :-** Union Of India And 5 Others**Counsel for Petitioner :-** Azizur Rahman Khan**Counsel for Respondent :-** A.S.G.I.,Vikas Budhwar,Yogendra Kumar**Hon'ble Pradeep Kumar Singh Baghel,J.****Hon'ble Piyush Agrawal,J.****(Per: Justice Piyush Agrawal)**

We have heard Shri Azizur Rahman Khan, learned counsel for the petitioner and Shri Vikas Budhwar, learned counsel for the respondent nos. 2 & 3.

By means of the present writ petition, the petitioner is challenging the order dated 13.07.2019 passed by the respondent no. 3; whereby, the petitioner's candidature for Retail Outlet Dealership in Group - 1 category has been rejected and the same has been changed to Group - 3 category.

The facts of the case, in brief, are that on 25.11.2018, an advertisement was issued for selection of retail outlet dealership by the respondent - Hindustan Petroleum Corporation Limited (HPCL) for different locations. The petitioner, vide online application dated 21.12.2018, applied for the location on Dumariyaganj - Bansi road, Village - Sekhui, Tappa - Hallour, Block - Dumariyaganj, District - Siddharth Nagar. Thereafter, vide letter/e-mail dated 20.06.2019, the petitioner was declared successful in draw of lots for the retail outlet dealership in Group - 1 category and the petitioner was asked to submit certain documents and security amount. Pursuant to the aforesaid letter, the petitioner deposited the security amount of Rs. 40,000/- on 26.06.2019, along with the documents.

Thereafter, by the impugned letter/order dated 13.07.2019, the petitioner's candidature for Retail Outlet Dealership was changed from

Group - 1 to Group - 3. The petitioner has been further informed that his candidature for retail outlet dealership may be considered for selection along with Group - 3 category as per the guidelines.

Learned counsel for the petitioner submits that the order dated 13.07.2019 has been passed in gross violation of the principles of natural justice and without affording an opportunity of hearing to the petitioner. He further submits that no reason has been assigned in the impugned order for rejecting the claim of the petitioner.

Learned counsel for the respondents, on the other hand, submits that the impugned order does not suffer from any illegality and tries to justify the passing of the impugned order.

On perusal of the impugned order, we find that the respondent - Corporation has not recorded any conclusion in the impugned order and without assigning any reason, the category of the petitioner for retail outlet dealership has been changed from Group - 1 to Group - 3.

It is settled law that reason is the heartbeat of every conclusion. An order without valid reasons cannot be sustained. To give reasons is the rule of natural justice. One of the most important aspect for necessitating to record reason is that it substitutes subjectivity with objectivity. It is well settled that not only the judicial order, but also the administrative order must be supported by reasons recording in it.

Highlighting this rule, the Hon'ble Supreme Court, in the case of ***Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota Vs. Shukla & Brothers***, (2010) 4 SCC 785, has observed that the administrative authority and the tribunal are obliged to give reasons, absence whereof would render the order liable to judicial chastisement. The relevant paragraphs of the aforesaid judgement are quoted as under:-

"10. The increasing institution of cases in all Courts in India and its resultant burden upon the Courts has invited attention of all concerned in

the justice administration system. Despite heavy quantum of cases in Courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher Court, providing of reasons can never be dispensed with. 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.

11. The Supreme Court in the case of *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". To enable the Courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review. This Court with approval stated:-

"11. ...the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."

12. 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 give reasons, absence whereof could render the order liable to judicial chastisement. 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.

13. 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.

14. *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.*

15. *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. ..."

16. *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:-*

"56. . . 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. . . ."

17. *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."

This principle has been extended to administrative actions on the premise that it applies with greater rigor to the judgments of the Courts.

18. 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."

19. In the cases where the Courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the Court of competent jurisdiction are challenged in absence of proper discussion. The requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the Court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court.

20. A Bench of Bombay High Court in the case of *M/s. Pipe Arts India Pvt. Ltd. V. Gangadhar Nathuji Golamare* [2008 (6) Maharashtra Law Journal 280], wherein the Bench was concerned with an appeal against an order, where prayer for an interim relief was rejected without stating any reasons in a writ petition challenging the order of the Labour Court noticed, that legality, propriety and correctness of the order was challenged on the ground that no reason was recorded by the learned Single Judge while rejecting the prayer and this has seriously prejudiced the interest of justice. After a detailed discussion on the subject, the Court held:-

"8. The Supreme Court and different High Courts have taken the view that it is always desirable to record reasons in support of the Government actions whether administrative or quasi judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any order, particularly, the order which can be subject matter of judicial review, is reasoned one. Even in the case of *Chabungbambohah Singh v. Union of India and Ors.* 1995 (Suppl) 2 SCC 83, the Court held as under:

"8. ...His assessment was, however, recorded as "very good" whereas qua the appellant it had been stated unfit. As the appellant

was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated unfit, and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made."

10. *In the case of Jawahar Lal Singh v. Naresh Singh and Ors. (1987) 2 SCC 222, accepting the plea that absence of examination of reasons by the High Court on the basis of which the trial Court discarded prosecution evidence and recorded the finding of an acquittal in favour of all the accused was not appropriate, the Supreme Court held that the order should record reasons. Recording of proper reasons would be essential, so that the Appellate Court would have advantage of considering the considered opinion of the High Court on the reasons which had weighed with the trial Court.*

12. *In the case of State of Punjab and Ors. v. Surinder Kumar and Ors. [(1992) 1 SCC 489], while noticing the jurisdictional distinction between Article 142 and Article 226 of the Constitution of India, the Supreme Court stated that powers of the Supreme Court under Article 142 are much wider and the Supreme Court would pass orders to do complete justice. The Supreme Court further reiterated the principle with approval that the High Court has the jurisdiction to dismiss petitions or criminal revisions in limini or grant leave asked for by the petitioner but for adequate reasons which should be recorded in the order. The High Court may not pass cryptic order in relation to regularisation of service of the respondents in view of certain directions passed by the Supreme Court under Article 142 of the Constitution of India. Absence of reasoning did not find favour with the Supreme Court. The Supreme Court also stated the principle that powers of the High Court were circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the basis of whims or subjective opinion varying from Judge to Judge.*

13. *In the case of Hindustan Times Ltd. v. Union of India and Ors. [(1998) 2 SCC 242], the Supreme Court while dealing with the cases under the Labour Laws and Employees' Provident Funds and Miscellaneous Provisions Act, 1952 observed that even when the petition under Article 226 is dismissed in limini, it is expected of the High Court to pass a speaking order, may be briefly.*

14. *Consistent with the view expressed by the Supreme Court in the afore-referred cases, in the case of State of U.P. v. Battan and Ors. [(2001) 10 SCC 607], the Supreme Court held as under:*

"4. ...The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the High Court order not sustainable."

15. *Similar view was also taken by the Supreme Court in the case of Raj Kishore Jha v. State of Bihar and Ors. JT 2003 (Supp.2) SC 354.*

16. In a very recent judgment, the Supreme Court in the case of *State of Orissa v. Dhaniram Luhar* (2004) 5 SCC 568 while dealing with the criminal appeal, insisted that the reasons in support of the decision was a cardinal principle and the High Court should record its reasons while disposing of the matter. The Court held as under:

"8. Even in respect of administrative orders Lord Denning, M.R. In *Breen v. Amalgamated Engg. Union* observed: "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree* it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; 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; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

17. Following this very view, the Supreme Court in another very recent judgment delivered on 22nd February, 2008, in the case of *State of Rajasthan v. Rajendra Prasad Jain Criminal Appeal No. 360/2008* (Arising out of SLP (Crl.) No. 904/2007) stated that "reason is the heartbeat of every conclusion, and without the same it becomes lifeless."

18. Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the lis has a right of appeal and, therefore, it is essential for them to know the considered opinion of the Court to make the remedy of appeal meaningful. It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only desirable but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the Courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion. Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the Article, *Blackrobed Bureaucracy Or Collegiality Under*

Challenge, (42 MD.L. REV. 766, 782 (1983), observed as under:-

"My own guiding principle is that virtually every appellate decision requires some statement of reasons. The discipline of writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the Court that a bare signal of affirmance, dismissal, or reversal does not."

19. The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation. Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:-

"When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid."

20. The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinized by the Appellate Court. The reasons indicated by the Court could be accepted by the Appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on September 13, 2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said,

"The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written: -

(1) to clarify your own thoughts;

(2) to explain your decision to the parties;

(3) to communicate the reasons for the decision to the public; and

(4) to provide reasons for an appeal Court to consider."

22. *Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120, the Court went to the extent of observing that "Failure to give reasons amounts to denial of justice". Reasons are really linchpin to administration of justice. They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher Courts but is even of great utility for providing public understanding of law and imposing self-discipline in the Judge as their discretion is controlled by well established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award. The Court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various contentions were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals."*

21. *The principles stated by this Court, as noticed supra, have been reiterated with approval by a Bench of this Court in a very recent judgment, in State of Uttaranchal v. Sunil Kumar Singh Negi [(2008) 11 SCC 205], where the Court noticed the order of the High Court which is reproduced hereunder:-*

"I have perused the order dated 27.5.2005 passed by Respondent 2 and I do not find any illegality in the order so as to interfere under Article 226/227 of the Constitution of India. The writ petition lacks merit and is liable to be dismissed."

and the Court concluded as under:-

"In view of the specific stand taken by the Department in the affidavit which we have referred to above, the cryptic order passed by the High Court cannot be sustained. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State

of *U.P. v. Battan*¹. About two decades back in *State of Maharashtra v. Vithal Rao Pritirao Chawan* the desirability of a speaking order was highlighted. The requirement of indicating reasons has been judicially recognised as imperative. The view was reiterated in *Jawahar Lal Singh v. Naresh Singh*.

10. In *Raj Kishore Jha v. State of Bihar* this Court has held that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.

"11. 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;..

12. In the light of the factual details particularly with reference to the stand taken by the Horticulture Department at length in the writ petition and in the light of the principles enunciated by this Court, namely, right to reason is an indispensable part of sound judicial system and reflect the application of mind on the part of the court, we are satisfied that the impugned order of the High Court cannot be sustained."

22. Besides referring to the above well-established principles, it will also be useful to refer to some text on the subject. H.W.R. Wade in the book "Administrative Law, 7th Edition, stated that the flavour of said reasons is violative of a statutory duty to waive reasons which are normally mandatory. Supporting a view that reasons for decision are essential, it was stated:-

".....A right to reasons is, therefore, an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice...

.....Reasoned decisions are not only vital for the purposes of showing the citizen that he is receiving justice: they are also a valuable discipline for the tribunal itself....."

23. We are not venturing to comment upon the correctness or otherwise of the contentions of law raised before the High Court in the present petition, but it was certainly expected of the High Court to record some kind of reasons for rejecting the revision petition filed by the Department at the very threshold. A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds. Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons, reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and foundation for conclusions or exercise of judicial discretion by the courts. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (*Wharton's Law Lexicon*). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces

an element of uncertainty, dis- satisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever precise they may be.

24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dis- satisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever precise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the Courts to record reasons.

26. Our procedural law and the established practice, in fact, imposes unqualified obligation upon the Courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that, the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order XIV Rule 2 read with Order XX Rule 1 of the Code of Civil Procedure requires that, the Court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the Court.

27. By practice adopted in all Courts and by virtue of judge made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In the case of Alexander Machinery (Dudley) Ltd. (supra), there are apt observations in this regard to say "failure to give reasons amounts to denial of justice". Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher Court. Absence of reasons thus would lead to frustrate the very object stated hereinabove. The order in the present case is as cryptic as it was in the case of Sunil Kumar Singh Negi (supra). Being a cryptic order and for the reasons recorded in that case by this Court which we also adopt, the impugned order in the present appeal should meet the same fate.

28. The order in the present case is as cryptic as it was in the case of Sunil Kumar Singh Negi (supra). Being a cryptic order and for the reasons recorded in that case by this Court which we also adopt, the impugned order in the present appeal should meet the same fate."

We find that the authority concerned has only recoded its conclusion without assigning any reason. It is a well settled law that the administrative order also must be supported by the reasons recorded in it. The reason is heartbeat of every conclusion. The absence of reason makes an order unsustainable. One of the most important aspects for insisting to record reason is that it substitutes the subjectivity with objectivity. It is also treated as a part of natural justice and fair play.

In the case of *M/s Travancore Rayon Ltd. v. Union of India*, 1969 (3) SCC 868 the Supreme Court has held as under:

"11. ...The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached, in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

The aforesaid said judgment has been quoted with approval by the Constitution Bench of the Supreme Court in the case of *S.N. Mukherjee Vs. Union of India*, (1990) 4 SCC 594.

The Constitution Bench of the Hon'ble Supreme Court in the case of *S.N. Mukherjee* (supra) has emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise".

The Hon'ble Supreme Court, in the said judgement, has emphasised the importance of recording a reason for decision by the administrative authority and the Tribunal to enable the Courts to exercise the power of review in consonance with the settled principle and the authorities are advised of the consideration underlining the action under review.

The Hon'ble Supreme Court has consistently taken the view that recording of reason is an essential feature of dispensation of justice. A litigant, who approaches the Court with a grievance in accordance with law, is entitled to know the reason for grant or rejection of his prayer. An administrative order 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 Authority 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 administrative order.

The Hon'ble Supreme Court in the case of ***Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati & Others***, (2015) 8 SCC 519 has held as under:-

"19. What is the genesis behind this requirement? Why it is necessary that before an adverse action is taken against a person he is to be given notice about the proposed action and be heard in the matter? Why is it treated as inseparable and inextricable part of the doctrine of principles of natural justice?"

20. Natural justice is an expression of English Common Law. Natural justice is not a single theory – it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called 'naturalist' approach to the phrase 'natural justice' and is related to 'moral naturalism'. Moral naturalism captures the essence of commonsense morality – that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act

judicially. They must deal with the question referred both without bias and they must give to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice'. The principles of natural justice developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'."

The Hon'ble Supreme Court in the case of **J. Ashoka Vs. University of Agricultural Sciences & Others**, (2017) 2 SCC 609 has held as under:-

"22. In *G. Durga Nageshwari*, it was held as under:-

*"9. The above case no doubt interpreted the Indian Administrative Service Regulations. Regulation 5(5) of the said Regulations required recording of reasons for supersession. But as can be seen from the above paragraph of the Judgment, the Supreme Court based its conclusion on the right to equality guaranteed under Articles 14 and 16(1) of the Constitution and observed that recording or reasons for overlooking the claim of a person who is above and select a person below was necessary. The said principle was applied by this Court in the case of *T.K. Devaraju v. State of Karnataka*, ILR 1988 KAR 2084. This Court pointed out that the Regulation 5(5) of the Indian Administrative Service Regulation was only for the purpose of giving effect to Article 14 and 16(1) of the Constitution and the position would be the same even in the absence of such a regulation because of recording of reasons is the only way to ensure obedience to the fundamental right guaranteed under Articles 14 and 16(1). Therefore, in our opinion, Clause (4) of Statute 30 must be read along with Articles 14 and 16(1) of the Constitution, for the reasons, the University of Agricultural Sciences is state as defined in Article 12 of the Constitution and hence bound by the Articles included in the Fundamental Rights Chapter. Therefore, when under Clause (2) of Statute 30, a Selection Committee constituted for making selection on the basis of the performance of the candidate at the interview recommends the names in the order of merit, the power of the Board of Regents to choose best among them means normally it should proceed in the order of merit as arranged by the Selection Committee, and if it is of the view that any person placed lower is the best, it can do so, but it has to record reasons. If reasons are recorded then it can be said that the provisions of Articles 14 and 16(1) are complied with. But if a person placed below is appointed without assigning any reason, there is no other alternative than to hold that such a selection and appointment is arbitrary and violative of Articles 14 and 16(1) of the Constitution.*

10. In the present case, it is not disputed that no reasons had been recorded by the Board of Regents as to why the 2nd respondent was selected for appointment in preference to the petitioner though the petitioner was placed at Sl. No. 1 and the 2nd respondent was placed at Sl. No. 3. The learned Counsel for the University submitted that reasons

were not recorded in view of the earlier decision of this Court in Keshayya's case in which it was held that the Board of Regents had the power to select any one of the persons whom it considers best and make the appointment. But the precise question raised in this case and which was not raised in Keshayya's case is as to whether the Board of Regents could do so without assigning any reason. As shown earlier, the recording of reasons is a must having regard to the right guaranteed to the citizens under Articles 14 and 16(1) of the Constitution. Therefore, we are of the view that whenever the Board of Regents considers that a person placed lower in merit in the list of selected candidates recommended by the Selection Committee, it can do so only by recording reasons as to why the case of the person placed above is being overlooked and the person below is considered the best for being appointed. In the present case, no reasons have been recorded, may be for the reason the Board considered that it was unnecessary as stated by the learned Counsel. He however submitted that the Board of Regents has stated that respondent-2 is more suitable than the petitioner. That is the conclusion and not the reason. That conclusion must be preceded by the reason which is wanting in this case"

24. Reasons are the links between materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject - matter for a decision whether it is purely administrative or quasi - judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We, therefore, are of the considered opinion that the relevant provisions of the Statute were fully complied with."

Further, the Hon'ble Supreme Court in the case of **Kranti Associates Private Limited & Another Vs. Masood Ahmed Khan & Others**, (2010) 9 SCC 496 has held as under:-

"12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasi- judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak and others vs. Union of India and others reported in AIR 1970 SC 150.

13. In *Kesava Mills Co. Ltd. and another vs. Union of India and others* reported in AIR 1973 SC 389, this Court approvingly referred to the opinion of Lord Denning in *Rigina vs. Gaming Board Ex parte Benaim* [(1970) 2 WLR 1009] and quoted him as saying "that heresy was scotched in *Ridge and Baldwin*, 1964 AC 40".

14. The expression `speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of

parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

16. In the case of *Harinagar Sugar Mills Ltd. vs. Shyam Sunder Jhunjhunwala and others*, AIR 1961 SC 1669, the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111 Clause (3) of Indian Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, Government did not give any reason. The company challenged the said decision before this Court.

17. The other question which arose in *Harinagar (supra)* was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in *Harinagar (supra)* the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (Para 23, page 1678-79).

19. Again in the case of *Bhagat Raja vs. Union of India and others*, AIR 1967 SC 1606, the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a revision and confirming the order of the State Government in the context of Mines and Minerals (Regulation and Development) Act, 1957, and having regard to the provision of Rule 55 of Mineral and Concessions Rules. The Constitution Bench held that in exercising its power of revision under the aforesaid Rule the Central Government acts in a quasi-judicial capacity (See para 8 page 1610). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which Central Government upheld the order of the State Government (See para 9 page 1610). Therefore, this Court insisted on reasons being given for the order.

20. In *M/s. Mahabir Prasad Santosh Kumar vs. State of U.P and others*, AIR 1970 SC 1302, while dealing with U.P. Sugar Dealers License Order under which the license was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one. This Court further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See para 7

page 1304).

21. In the case of *M/s. Travancore Rayons Ltd. vs. The Union of India and others*, AIR 1971 SC 862, the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excise and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (See para 11 page 865-866).

22. In *M/s. Woolcombers of India Ltd. vs. Woolcombers Workers Union and another*, AIR 1973 SC 2758, this Court while considering an award under Section 11 of Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the Award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (See para 5 page 2761).

23. In *Union of India vs. Mohan Lal Capoor and others*, AIR 1974 SC 87, this Court while dealing with the question of selection under Indian Administrative Service/Indian Police Service (Appointment by Promotion Regulation) held that the expression "reasons for the proposed supersession" should not be mere rubber stamp reasons. Such reasons must disclose how mind was applied to the subject matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (See para 28 page 98).

24. In *Siemens Engineering and Manufacturing Co. of India Ltd. vs. The Union of India and another*, AIR 1976 SC 1785, this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (See para 6 page 1789).

25. In *Smt. Maneka Gandhi vs. Union of India and Anr.*, AIR 1978 SC 597, which is a decision of great jurisprudence significance in our Constitutional law, Chief Justice Beg, in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (Para 34, page 612). The learned Chief Justice also held when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears

to be done as well. This principle would obviously demand disclosure of reasons for the decision.

26. Justice Y.V. Chandrachud (as His Lordship then was) in a concurring but a separate opinion also held that refusal to disclose reasons for impounding a passport is an exercise of an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation. The learned Judge further held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See para 39 page 613).

27. In *Rama Varma Bharathan Thampuran vs. State of Kerala and Ors.*, AIR 1979 SC 1918, Justice V.R. Krishna Iyer speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. Learned Judge held that natural justice requires reasons to be written for the conclusions made (See para 14 page 1922).

28. In *Gurdial Singh Fijji vs. State of Punjab and Ors.*, (1979) 2 SCC 368, this Court, dealing with a service matter, relying on the ratio in *Capoor (supra)*, held that "rubber-stamp reason" is not enough and virtually quoted the observation in *Capoor (supra)* to the extent that reasons "are the links between the materials on which certain conclusions are based and the actual conclusions." (See para 18 page 377).

29. In a Constitution Bench decision of this Court in *Shri Swamiji of Shri Admar Mutt etc. etc. vs. The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors.*, AIR 1980 SC 1, while giving the majority judgment Chief Justice Y.V. Chandrachud referred to *Broom's Legal Maxims (1939 Edition, page 97)* where the principle in Latin runs as follows:

"Ces-sante Ratione Legis Cessat Ipsa Lex"

30. The English version of the said principle given by the Chief Justice is that:

"29.Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself." (See para 29 page 11).

31. In *M/s. Bombay Oil Industries Pvt. Ltd. vs. Union of India and Others*, AIR 1984 SC 160, this Court held that while disposing of applications under *Monopolies and Restrictive Trade Practices Act* the duty of the Government is to give reasons for its order. This court made it very clear that the faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well considered orders. In saying so, this Court relied on its previous decisions in *Capoor (supra)* and *Siemens Engineering (supra)*, discussed above.

32. In *Ram Chander vs. Union of India and others*, AIR 1986 SC 1173, this Court was dealing with the appellate provisions under the *Railway Servants (Discipline and Appeal) Rules, 1968* condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rule. This Court held that the word "consider" occurring to the Rule 22(2) must mean the Railway Board shall duly apply its mind and give

reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasized that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (Para 4, page 1176).

33. In *M/s. Star Enterprises and others vs. City and Industrial Development Corporation of Maharashtra Ltd. and others*, (1990) 3 SCC 280, a three-Judge Bench of this Court held that in the present day set up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various field of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justification for not doing so (see Para 10, page 284-285).

34. In *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi and others*, (1991) 2 SCC 716, this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on consideration of the materials on record, should record reasons in support of the conclusion reached (see para 22, pages 738-739).

35. In the case of *M.L. Jaggi vs. Mahanagar Telephones Nigam Limited and others*, (1996) 3 SCC 119, this Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (see para 8, page 123).

36. In *Charan Singh vs. Healing Touch Hospital and others*, AIR 2000 SC 3138, a three-Judge Bench of this Court, dealing with a grievance under CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial.

The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasizing". (See Para 11, page 3141 of the report)

37. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in the case of *Som Datt Datta vs. Union of India and others*, AIR 1969 SC 414, Mr. Justice Ramaswami delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. The Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (Para 10, page 421- 422 of the report).

38. About two decades thereafter, a similar question cropped up before this Court in the case of *S.N. Mukherjee vs. Union of India*, AIR 1990 SC 1984. A unanimous Constitution Bench speaking through Justice S.C. Agrawal confirmed its earlier decision in *Som Datt (supra)* in para 47 at page 2000 of the report and held reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial.

39. It must be remembered in this connection that the Court Martial as a proceeding is *sui generis* in nature and the Court of Court Martial is different, being called a Court of Honour and the proceeding therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of Winthrop in *Military Law and Precedents* are very pertinent and are extracted herein below:

"Not belonging to the judicial branch of the Government, it follows that courts-martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives."

40. Our Constitution also deals with Court Martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution.

41. In England there was no common law duty of recording of reasons. In *Marta Stefan vs. General Medical Council*, (1999) 1 WLR 1293, it has been held, "the established position of the common law is that there is no general duty imposed on our decision makers to record reasons". It has been acknowledged in the *Justice Report, Administration Under Law (1971)* at page 23 that "No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions".

42. Even then in the case of *R vs. Civil Service Appeal Board, ex parte Cunningham* reported in (1991) 4 All ER 310, Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said:

"..It is a corollary of the discretion conferred upon the board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane CJ's observations (in *R vs. Immigration Appeal Tribunal, ex p Khan (Mahmud)* [1983] 2 All ER 420 at 423, (1983) QB 790 at 794-795), the reasons for the lower amount is not obvious. Mr. Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the board were addressing their mind in arriving at their conclusion. It must be obvious to the board that Mr. Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them)".

43. The learned Master of Rolls further clarified by saying:

"..thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell

out an obligation on this board to give succinct reasons, if only to put the mind of Mr. Cunningham at rest. I would therefore allow this application."

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of Court to give reasons (See *North Range Shipping Limited vs. Seatrans Shipping Corporation*, (2002) 1 WLR 2397). It has been acknowledged that this trend is consistent with the development towards openness in Government and judicial administration.

45. In *English vs. Emery Reimbold and Strick Limited*, (2002) 1 WLR 2409, it has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in *Cullen vs. Chief Constable of the Royal Ulster Constabulary*, (2003) 1 WLR 1763, Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held,

"7. ...First, they impose a discipline ... which may contribute to such decisions being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the Courts in performing their supervisory function if judicial review proceedings are launched." (Para 7, page 1769 of the report).

46. The position in the United States has been indicated by this Court in *S.N. Mukherjee (supra)* in paragraph 11 at page 1988 of the judgment. This Court held that in the United States the Courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the Court cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In *S.N. Mukherjee (supra)* this court relied on the decisions of the U.S. Court in *Securities and Exchange Commission vs. Chenery Corporation*, (1942) 87 Law Ed 626 and *John T. Dunlop vs. Walter Bachowski*, (1975) 44 Law Ed 377 in support of its opinion discussed above.

47. 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.
- 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".

48. For the reasons aforesaid, we set aside the order of the National Consumer Disputes Redressal Commission and remand the matter to the said forum for deciding the matter by passing a reasoned order in the light of the observations made above. Since some time has elapsed, this Court requests the forum to decide the matter as early as possible, preferably within a period of six weeks from the date of service of this order upon it.

49. In so far as the appeal filed by the Bank is concerned, this Court finds that the National Consumer Disputes Redressal Commission in its order dated 4th April 2008 has given some reasons in its finding. The reasons, inter alia, are as under:

"We have gone through the orders of the District Forum and the State Commission, perused the record placed before us and heard the parties at length. The State Commission has rightly confirmed the order of the District Forum after coming to the conclusion that the Petitioner and the Builder - Respondents No.3 and 4 have colluded with each other

and hence, directed them to compensate the complainant for the harassment caused to them."

A Division Bench of this Court in Writ C No. 18164 of 2018 (**Nanak Chand Sharma Vs. State of U.P. & 3 Others**, decided on 03.12.2018) has held as under:-

"We find that the authority concerned has only recoded his conclusion without assigning any reason. It is a well settled law that not only administrative but judicial order also must be supported by the reasons recorded in it. The reason is heartbeat of every conclusion. The absence of reason makes an order unsustainable. One of the most important aspects for insisting to record reason is that it substitutes the subjectivity with objectivity. It is also treated as a part of natural justice and fair play.

In the case of M/s Travancore Rayon Ltd. v. Union of India, 1969 (3) SCC 868 the Supreme Court has held as under:

"11. ...The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached, in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

The aforesaid said judgment has been quoted with approval by the Constitution Bench of the Supreme Court in the case of S.N. Mukherjee Vs. Union of India, AIR 1990 SC 1984. Similar view has been taken by the Supreme Court in the cases of Union of India Vs. Mohan Lal Capoor, AIR 1974 SC 87; Raj Kishore Jha Vs. State of Bihar, (2003) 11 SCC 519; Kranti Associates Private Limited Vs. Masood Ahmed Khan, (2010) 9 SCC 496; Sant Lal Gupta and others v. Modern Cooperative Group Housing Society Limited and others, (2010) 13 SCC 336 and J. Ashoka v. University of Agricultural Science and others, (2017) 2 SCC 609."

In view of the aforesaid cases of the Hon'ble Supreme Court as well as this Court, it is clear that the reason is the heartbeat of the order and without reason, the order becomes dead.

The administrative order, without any reason, causes prejudice to

the person against whom it is passed. The Hon'ble Supreme Court, time and again, has emphasized the importance of recording reason for the decision by the administrative authorities.

In the case in hand, after perusal of the material available on record, we find that while passing the impugned order dated 13.07.2019, the respondent no. 3 has not assigned any reason for changing the category of the petitioner from Group – 1 to Group – 3 for the retail outlet dealership.

For the reasons mentioned above, we find that the impugned order dated 13.07.2019 cannot be sustained in the eyes of law and it is, accordingly, quashed.

The matter is remanded back to the respondent for passing afresh reasoned and speaking order after furnishing opportunity of hearing to all the stake holders.

The writ petition is, accordingly, allowed.

No order as to costs.

Order Date :- 13.9.2019
Amit Mishra