IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 3 of 2015

Date of decision: 23.4.2015

Sh. Raj Kumar Mehra & another …**Petitioners**

Versus

Sh. Surinder Mohan …**Respondent**

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioners: Mr. Suneet Goel, Advocate.

For the Respondent: Mr. R.K. Bawa, Senior Advocate with Mr.Jeevesh Sharma, Advocate.

Tarlok Singh Chauhan J. (Oral).

The petitioners are the landlords, who are aggrieved by the order passed by the learned Rent Controller, whereby the application filed by the respondent for amendment of reply was allowed.

2. The facts as are necessary for determination of the present petition are that the landlords in the year 2012 filed an eviction petition against the respondent. After completion of pleadings, issues were framed on 31.3.2014 and the case was listed

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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for evidence of the petitioners on 8.5.2014 when respondent filed an application for amendment of the reply. The respondent raised various grounds in the application for amendment, which were contested by the petitioners. The learned Rent Controller vide order dated 24.11.2014 allowed the application.

3. The petitioners have questioned the order on the ground that the respondent has failed to explain the delay in filing the application for amendment and further there was no averment in the application that despite due diligence the fact now sought to be incorporated in the reply was not within his knowledge, which was an essential prerequisite before the application could be allowed. This position is contested by the respondent, who has vehemently supported the impugned order.

I have heard the learned counsel for the parties and given my deep and thoughtful consideration to the rival contention of the parties.

4. A perusal of the impugned order would show that the learned Rent Controller after giving introduction of the case has reproduced the pleadings of the parties in paragraphs 2 to 4 of the order. In para 6 the provisions of Order 6 Rule 17 C.P.C. have been reproduced and thereafter paragraphs 7 and 8 reads thus:

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"7. The bare reading of this provision shows that every amendment should be allowed which is necessary for determining the real question in controversy between the parties and rules of caution are that such amendment should not cause prejudice to the other party and another rule of caution is that amendment should be allowed to avoid multiplicity of the litigation.

8. In the aforementioned facts of the present case, I am of the considered view that the amendment sought will go to the root of the real controversy between the parties and if this amendment is not allowed the same will result into the multiplicity of the litigations also. Further, this amendment shall not prejudice the other party as the other party shall get opportunity to rebut the contentions contained in the amended reply. Issues, in the present case were framed on 31.3.2014 but till date no witness has been examined in the present case. One issue which was raised by Ld. Advocate for the non-Applicants is that the present application has been prepared on 3.5.204 but was not filed on the next date of hearing i.e. 8.5.2014 and filed only on 5.7.014. To this issue Ld. Advocate for the applicant has replied by arguing that on 8.5.2015 the court was not functional as the Presiding Officer was on training at Lucknow and cases fixed for 8.5.2014 was further fixed for 5.7.2014 for effective hearing and on 5.7.2014 the present application has been filed in the court. Perusal of the orders dates 5.7.2014 and 8.5.2014 reveals that the claim of Ld. Advocate for the applicant is true as I was on training on 8.5.2014 and the cases of 8.5.2014 was fixed for 5.7.2014."

5. A perusal of the impugned order would show that it is bereft and devoid of any reasons. On what basis the learned Rent Controller concluded that the amendment sought for, went to the root of the real controversy between the parties and further on what basis it concluded that the amendment if not allowed would result in

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multiplicity of litigation, is not spelt out from the order. Yet further, how the amendment would not prejudice the other party has also not been spelt out, save and except by observing that the other party shall get an opportunity to rebut the contentions contained in amended reply. This is a highly unsatisfactory manner of disposing of an application, where no reasons precede the conclusion.

6. 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.

7. A judgment without reasons causes prejudice to the person against whom it is pronounced, as the litigant is unable to know the ground which weighed with the Court in rejecting his claim or accepting the claim of the opposite party. It also causes impediments in his taking adequate and appropriate grounds

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before the higher Court in the event of challenge to that judgment/order.

8. The Hon'ble Supreme Court in ***Kanti Associates Private Limited and another Vs. Masood Ahmed Khan and others (2010) 9 SCC 496,*** elaborately discussed the necessity of recording reasons in the following manner:-

> ***"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 AIR 1970 SC 150.***
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> ***13. In Keshav Mills Co. Ltd. and another vs. Union of India and others AIR 1973 SC 389, this Court approvingly referred to the opinion of Lord Denning in R. vs. Gaming Board for Great Britain ex p Benaim (1970) 2 WLR 1009 and quoted him as saying "that heresy was scotched in Ridge v. Boldwin, 1964 AC 40".***
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> ***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 pp.1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)***
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> ***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".***

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16. In 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 (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 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 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 (AIR pp 1678-79, para 23).

19. Again in 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 (AIR para 8 p. 1610). Where the State Government gives a number of reasons some of which are good and

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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 AIR para 9 page 1610). Therefore, this Court insisted on reasons being given for the order.

20. In Mahabir Prasad Santosh Kumar vs. State of U.P 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 AIR para 7 page 1304).

21. In Travancore Rayons Ltd. vs. The Union of India , 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 AIR para 11 page 865-866).

22. In Woolcombers of India Ltd. vs. Woolcombers Workers Union, 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

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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 AIR para 5 page 2761).

23. In Union of India vs. Mohan Lal Capoor, AIR 1974 SC 87, this Court while dealing with the question of selection under Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations 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 AIR paras 27- 28 page 97- 98).

24. In Siemens Engineering and Manufacturing Co. of India Ltd. vs. The Union of India, 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 AIR para 6 page 1789).

25. In Maneka Gandhi vs. Union of India., 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 (AIR 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

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

26. Y.V. Chandrachud, J. (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 AIR para 39 page 613).

27. In Rama Varma Bharathan Thampuran vs. State of Kerala AIR 1979 SC 1918, V.R. Krishna Iyer, J. 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 AIR para 14 page 1922).

28. In Gurdial Singh Fijji vs. State of Punjab, (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: (Capoor Case, SCC p. 854, para 28)

> *"28....Reasons are the links between the materials on which certain conclusions are based and the actual conclusions" (See AIR 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 Y.V. Chandrachud, CJ, referred to(SCC p.658, 29) Broom's Legal Maxims (1939 Edition, page 97) where the principle in Latin runs as follows:

> *"Cessante Ratione Legis Cessat Ipsa Lex"*

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30. The English version of the said principle given by the Chief Justice is that:(H.H. Shri Swamiji case, SCC p.658, para 29)

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

31. In Bombay Oil Industries Pvt. Ltd. vs. Union of India , 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, 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 (AIR Para 4, page 1176).

33. In Star Enterprises and others vs. City and Industrial Development Corporation of Maharashtra Ltd., (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

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process and opined that such reasons should be communicated unless there are specific justification for not doing so (see SCC Para 10, page 284-85).

34. In Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi, (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 SCC para 22, pages 738-39)

35. In M.L. Jaggi vs.MTNL (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 SCC para 8, page 123).

36. In Charan Singh vs. Healing Touch Hospital, 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 AIR 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, AIR 1969 SC 414, where Ramaswami, J. delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do

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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. (AIR Para 10, pageS 421- 22 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 S.C. Agrawal, J. confirmed its earlier decision in Som Datt in S.N.Mukherjee case, SCC p.619,para 47 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 (WLR page 1300)

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> *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 R. vs. Civil Service Appeal Board, ex p Cunningham (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: (All ER page 317)

> *"… '…. 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: (Civil Service Appeal Board Case, All ER 317)

> *"….. '….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*

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> ***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:(WLR p.1769, para 7)

> ***"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."***

46. The position in the United States has been indicated by this Court in S.N. Mukherjee in SCC p.602, para 11 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 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 Dunlop vs. Bachowski, (1975) 44 Law Ed 377 in support of its opinion discussed above.

47. Summarizing the above discussion, this Court holds:

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(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.

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(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 731-37).

(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 Ruiz Torija v.Spain (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".

9. The necessity of recording reasons even by the administrative authorities, which equally apply to the judicial

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authorities was re-iterated by the Hon'ble Supreme Court in ***Ravi Yashwant Bhoir Vs. District Collector, Raigad and others (2012) 4 SCC 407,*** wherein it has been held as under:-

> ***"38. It is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.***
>
> ***39. In Shrilekha Vidyarthi Vs. U.P. (1991) 1 SCC 212 this Court has observed as under: (SCC p. 243, para 36).***
>
> > ***"36……Every State action may be informed by reason and it follows that an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is the trite law that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."***
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> ***40. In LIC Vs. Consumer Education and Research Centre (1995) 5 SCC 482 this Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. A similar view has been reiterated by this Court in Union of India Vs. Mohan Lal Capoor (1973) 2 SCC 836 and Mahesh Chandra Vs. U.P. Financial Corpn.(1993) 2 SCC 279.***
>
> ***41. In State of W.B. Vs. Atul Krishna Shaw 1991 Supp (1) SCC 414, this Court observed that : (SCC p. 421, para 7)***
>
> > ***"7….Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."***
>
> ***42. In S.N. Mukherjee Vs. Union of India(1990) 4 SCC 594, it has been held that the object underlying the rules of natural justice is to prevent***

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miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as to it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43. In Krishna Swami Vs. Union of India (1992) 4 SCC 605, this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne out from the record. The Court further observed: (SCC p. 637, para 47).

> *"47……Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21".*

44. This Court while deciding the issue in Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd.(2010) 13 SCC 336, placing reliance on its various earlier judgments held as under: (SCC pp. 345-46, para 27).

> *"27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.*
>
> > *'3….The giving of reasons for a decision is an essential attribute of judicial and judicious*

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> *disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind'.*

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before the higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

45. In Institute of Chartered Accountants of India Vs. L.K. Ratna (1986) 4 SCC 537, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held: (SCC p. 558, para 30).

"30.....In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilty of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a 'finding'. Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

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> ***46. The emphasis on recording reason 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 of the authority before the 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 the 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."***

10. Recording of reasons in cases where the order is subject to further appeal/revision is very important from yet another angle. The revisional or appellate Court or authority ought to have the advantage of examining the reasons that prevailed with the Court or the authority making the order. Conversely, absence of reasons in an appealable or revisional order deprives the appellate or revisional Court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own. The appellate or revisional Court or authority may in a given case decline to undertake any such exercise and remit the matter back to the lower Court or authority for a fresh and reasoned order. That, however, is not an inflexible rule, for an appellate or revisional Court may notwithstanding the absence of reasons in support of the order examine the matter on merits and

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finally decide the same. This discretion is vested with the appellate or revisional Court or authority.

11. Looking into the nature of the controversy, this Court would disassociate itself from rendering any findings lest it causes prejudice to either of them and this Court cannot be oblivious of the fact that the further remedy would thereafter be only before the Hon'ble Apex Court.

In view of the aforesaid discussion, in absence of any reasons, the order has become vulnerable and liable to be set aside and is accordingly set aside. The learned Rent Controller is directed to consider the application afresh. The parties are directed to appear before the learned Rent Controller on **15.5.2015**.

(Tarlok Singh Chauhan),
Judge.

23rd April, 2015
(KRS)

High Court of H.P.

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