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Reasoned Decision : A Principle of Natural Justice

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ABSTRACT

Reasoning is a process of thought aimed at reaching or justifying a conclusion. The process involves a considerations of facts and impressions, experiences and principle, objective and ideas.Generally either quasi-judicial or administrative authorities are bound to give the reason in their decisions. But the question may arise whether the giving of reasons is a principle of natural justice. A speaking order or reasoned decision is considered as a principle of the natural justice. It introduces clarity and minimises arbitrariness on the part of administration. A reasoned decision or speaking order, as it is called is an intelligible order or an order which is comprehensive, *i.e.* an order which speaks of its own. Jurisprudentially, reasoning is a process of thought aimed at reaching or justifying a conclusion. The giving of reasons is one of the fundamental of good administration.

Key Words : Reasoned decision, Administrative authorities, Natural justice

INTRODUCTION

Various arguments have been given on the role and the necessity of reasoned decision. The role of reasons in the structuring of discretion is that the recording of reasons enables administrative bodies to distill principles from past cases and to create "standards" to govern future decisions[1]. The rule of the law is also evident in the suggestion that an obligation to give reasons "imports a network of background moral principles" such as the principle that like cases be treated alike in absence of a reason for distinguishing[2]. The giving of reason can be said to promote participation by forcing administrative authorities to respond to the interests argued before them.

Galligan[3] argues that it is a condition for the legitimate exercise of any governmental power that decisions be rational, "that the power holder be able to give reasons which both explain and justify its exercise in terms of the underlying policy." Requirement to provide reasons helps the parties to understand the decision and the proceedings, also it encourages a higher standard of decisions.

Reasoned decisions are not only vital for the purpose of showing the citizen that he is receiving; they are also a valuable discipline for the tribunal itself. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of law. A right to reason is therefore an indispensable part of sound system of judicial review. Prof. de Smith expressed the view that a person prejudicially affected by a decision must be made adequately notified of the case he has to meet in order to exercise any right he may have to make further representation or effectively to exercise a right of appeal[4].

Giving of reasons is an essential element of justice and it has been said that its non-observance amounts to

1. See, K. C. Davis, *Discretionary Justice* 103-106 (1971)
2. Geneva Richardson, "The Duty to Give reasons : Potential and Practice", Public Law 446 (1986)
3. D. G. Galligan, *Discretionary Powers*, 266-7 (1990)
4. de Smith, *Judicial Review of Administrative Action*, 149 (1980)

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"denial of justice"[5], "negation of rule of law"[6] or "error of law"[7]. The administrative law reforms bodies in England, U.S.A. and India have recognized the importance of reasons.

Position in England:

The Committee on Ministers powers had insisted that natural justice required that there should be reasoned decisions. Similarly the Frank's Committee[8] insisted that there should be a general practice of adjudicatory bodies to give reasons for their decisions. This suggestion has been given statutory force. Section 12 of the Tribunals and Inquiries Act, 1958 (now Act of 1971) imposes a duty upon a Tribunal or Minister to give reasons for the decision under two conditions : (i) the duty to give reasons arises only when a request to give reasons arises only when a request to give them is made to the Tribunal or Minister and (ii) no such duly arises under the Act if the request is made after the decision has been given or notified.

Position in USA:

The requirement of giving reasons for the decisions has been given statutory force. Section 8 (b) of the Administrative Procedure Act, 1946 require all administrative decisions to be accompanied by "findings and conclusions", as well as the reasons or basis thereof, upon all the material issues of fact, law or discretion presented on the record. Even outside the scope of the statute it has been held that one who decides must give reasons for his decision[9]. The Supreme Court has held that the reasons are essential for enabling the court to effectively exercise its power of judicial review[10].

The Recommendation of Law Commission of India:

In India, the matter was considered by the Law Commission in the 14th Report relating to reforms in judicial administration. The Law Commission recommended that in the case of administrative decisions, provisions should be made that they should be accompanied by the reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate writs[11].

Express Statutory Requirement:

In India there exist no general law requiring all administrative authorities to give reasons for their decisions like the Administrative Act of 1946 in U.S., and the Tribunals inquiries Act of 1971 in England. Therefore there is no general statutory obligation on the administrative authorities to give reasons for their decisions. But the judiciary has imposed an obligation on quasi-judicial authorities to record reasons. Statutory requirement of giving reasons by the administrative authorities must give reasons for their decisions mentioned in that statute. Quite often statutes so required the administrative authorities to give reasons. This requirement may be imposed either by the parent Act or by subordinate legislation. In both cases it imposes a binding obligation on the administrative authority to give reasons for this decision[12].

Wherever the parent Act or subordinate legislation requires the administrative authority to give reasons, such requirement has always been considered mandatory. Therefore, if the concerned administrative authority fails to give reasons for the decisions the decision is considered to be null and void[13].

The duty to give reasons may be either a statutory

5. *Regina* v. *Immigration Appeal Tribunal Exparte Khan (Mahmud)* (1983) 2 All E.R. 420
6. *Mahavir Prasad* v. *State of U.P.* AIR 1970 SC 1302, *VasudevVishownath* v. *New Education Institute*, AIR 1986 SC 2107
7. *Lavendar and Son Ltd* v. *Minister of Housing and Local Government* (1970) 3 All ER 871
8. Committee on Administrative Tribunal and Inquiries, 24, 75 (1957)
9. *U.S* v *Chicago* (1935), 294, see for detail account Bernard Schwartz, *The Law in Amerrica : A History* 101-106 (1974)
10. *Grifffith* v, *Illinois,*351 US 12 (1956)
11. Law Commission of India, Fourteenth Report on Reform of Judicial Administration VOl. 11, p 9 (1958)
12. M.A. Fazal Judicial control of Administrative Action in India, Pakistan and Bangladesh, 183 (1990)
13. *Ratilal Bhagilal* v. *State of Gujarat* AIR 1966, Guj. 244; *Rajamallaiah* v. *Anil Kishore* AIR 1980 SC 1502; *Gram Panchayat* v. *The Collector, West Godavari Eluru & Others*, AIR 1986 A.P. 240. Also see S N Jain, "Administrative Law: Aspect of Maneka Gandhi, 21 *J.I.L.I*, 382 (1979).

requirement or non-statutory. Where the duty is laid down by the Act or rules made thereunder, obviously, the authority is bound to give reasons decisions in all cases to which that provision is applicable.

Implied Requirement:

Where statute does not expressly impose a requirement to give reason, the courts in India have spelled out a general obligation on the adjudicatory bodies to give reasons. Such obligations has been founded either on the constitutional provisions or on implicit requirement of statute.

(i) Constitutional Requirement: The reasons decisions also involve a question of procedural fairness. Article 14 has recently emerged as one of the strong weapon in the hands of the courts, to control any kind of arbitrariness. In *Maneka Gandhi* v. *Union of India*[14] Bhardwaj J said that Art 14 ensures "fairness" in state action and an procedure which is not right and just and fair : and is "arbitrary, fanciful or oppressive will be invalid under this Article. Apart from the Art. 14, Art. 16, Art. 19, Art. 21, Art. 226, Art. 227 of the Constitution of India are the respective provisions in this regard.

(ii) Statutory Requirements : There appears to be no general rule that the requirement of giving reasoned decisions has to be implied wherever a statute authorizes an administrative authority to take decisions. The courts have been hesitant to declare expressly that the duty to give reasons is one of the principle and or natural justice, but there can be no doubt that they have treated such duty at part with the obligation of the tribunals to observe the fundamentals of fairplay In *Anchar Ali* v. *State of Assam*[15] the court held that I the present state of Indian law it can not be held that giving the reasons is a part of natural justice, but non-arbitrariness of an action being increasingly recognized as a part of the equity clause enshrined in the constitution. In *Sushma Gosain* v. *Union of India*[20] the Court held that the denial of appointment without giving any reason is patently arbitrary.

(iii) Decision of the First Instance: The duty to give reasons assumes a new significance in those cases where the statute provides for an appeal against the impugned orders. Such cases mostly arise in the field of licensing or refusal of permits by the administrative authorities. Thus, it has been held that an authority or a tribunal exercising judicial or quasi-judicial powers should give the statute does not provide for an appeal or revision, the judicial opinion is quite settled that all quasi-judicial decisions must express reasons[16]. It is well settled that for all quasi-judicial decisions of the first instance, reasons must be recorded.

(iv) Decision of the Appellate or Revisional body: The courts have consistently held that when a decision of a lower authority was wholly or partially reversed in appeal or revision, the reasons for such reversal must be stated[17]. In *M P Industries* v. *Union of India*[18] the Supreme Court ruled that since the State Govt. had given reasons, the Central Government confirming the decision in appeal was not required to give reasons. But in *Bhagat Raja* v. *Union of India*[19] the Supreme Court ruled that the Central Govt affirming the order of the state government was bound to give reasons. But in *Tarachand* V. *Municipal*

14. AIR 1978 S.C 597.
15. AIR 1978 Gau. 12
16. AIR 1989 Kant 85
17. See *State of Gujrat* v. *P Raghav*, AIR 1969 SC 1297; *C.I.T. Bombay* v. *Walchand & Co. AIR 1967 SC 1435.*
18. AIR 1966 SC 671.
19. AIR 1967 SC 1606.

Corporation of Delhi[20], the Supreme court held that the disciplinary authority is not required to give reasons in case it fully agrees with the findings of the enquiry officer.

In *S N Mukherjee* v. *Union of India*[21] the Supreme Court observed that except in cases where the requirement of reasoning has been dispensed with expressly or by necessary implications, an administrative authority exercising judicial or quasi-judicial functions must record reasons in support of their decisions. The considerations for recording are: (i) such decisions are subject to the appellate jurisdiction of the Supreme Court under Article 136 as well as supervisory jurisdiction of High Courts under Article 227; (ii) it guarantees consideration by the adjudicating authority; (iii) it introduces clarity in the decisions, and (iv) it minimizes chances of arbitrariness and ensures fairness in the decision – making process.

Requirement of Reasons : Judicial Pronouncements:

Recording of reasons seems parallel to the principle of 'hearing' The courts have evolved the requirement of reasoned decision as a part of natural justice in order to check the arbitrariness in quasi-judicial or administrative organ.

Quasi Judicial Decision :

In *Govind Rao* v, *State of M.P.*[22] the application for grant of money or pension as maintenance was rejected but no reasons were given in the order. The court observed that the power vested in the government must have obviously been exercised in a quasi-judicial manner. The petitioners were not only entitled to know the reasons but must have been also heard as the matter must be dealt with in a quasi-judicial manner. But as the order of the government did not fulfil the elementary requirements of a quasi-judicial process" the same was set aside.

In *Union of India* v. *M L Kapoor*[23] Justice Beg while stating importance of disclosure of reasons observed : "Reasons are the Links between the 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."

The rule requiring reasons to be given in support of an order, must inform every quasi-judicial process and this rule must be observed in the proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

Administrative Authority Exercising Quasi-Judicial Functions :

In *Tarachand* v. *Delhi Municipality*[24] the court had dealt with the dismissal of the appellant. One of the contentions advanced in that case was that as no reasons for passing the impugned order were given, the same was bad in the eye of law. While dealing with this submission it was observed that while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its order, if it differs from the conclusion arrived at and the recommendations made by the enquiry officer. In view of the scheme of the particular enactment or the rule made thereunder, It would be laying a proposition a little too broadly to say that even an order of concurrence must be supported by reasons.

Administrative Authority Exercising Power of Administrative Decisions :

In *M/s Dwarkadas Marfatia & Sons* v. *Board of Trustees, Bombay Port*[25] the Supreme Court has reiterated that even though Article14 of the Constitution can not be construed as of an unfettered character for judicial review for state actions, and to call upon the state to account for its actions in its manifold activities by stating reasons for such actions, all its actions in its manifold

20. AIR 1977 SC 567.
21. AIR 1990 SC 1984.
22. AIR 1965 SC 1223.
23. AIR 1974 SC 87.
24. AIR 1977 SC 567.
25. AIR 1989 SC 1642.

activities by stating reasons for such actions, all its actions uninformed by reasons may be questioned as arbitrary in proceedings. It has been ruled that every activity of a public authority must be informed by reasons.

Undoubtedly, even administrative action, it has been said, must be informed with reason and fairness[26]. Similarly where an order is likely to prejudicially affect a person, reasons have to be recorded.

In *S N Mukherjee* v. *Union of India*[27], the Supreme Court observed, "keeping in view the expending horizon of he principles of natural justice, we are of the opinion, that the requirement of record reasons can be upgraded as one of the principles of natural justice which govern exercise of power by administrative authorities.

The Supreme court in *Maharashtra State Board of Secondary and Higher Secondary Education* v. *KS Gandhi*[28] reemphasized the need of recording the reasons not only in quasi-judicial but also in administrative decisions. The Court observed, "…when an order affects the rights of a citizen or a person irrespective of the fact whether it is a quasi-judicial or administrative order and unless the rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principle of natural justice or fair-play require recording of germane and precise relevant reasons as a part of fair procedure[29]". The Supreme Court in its decision in *M/S Kranti Asso. Pvt. Ltd. & Anr* v. *Masood Ahmed Khan & Ors*[30], has again highlighted the importance of giving reasons while passing a judgment / order by any judicial or quasi-judicial body

Concluding Remarks :

The requirement of giving of reasons is like '*audi alteram partem*', a principle of natural justice and it should also be applied with all flexibility inherent in the concept of natural justice. It is generally pointed out that the requirement of giving of reasons has not yet been recognised in a separate law like in USA . But this can not be taken as precedent to minimize the value and importance as well as necessity of giving reasons in India.

Today the old 'Police State' has become a 'Welfare State'. The governmental functions have increased, administrative tribunals and other executive authorities have come to stay and they are armed with wide discretionary powers and there are all possibilities of abuse of power by them. To provide a safeguard against the arbitrary exercise of power by these authorities, the conditions of recording reasons is the need of the hour. The object underlying the rules of natural justice is to secure "fair play in action", The requirement of reasons for its decision by an administrative authority exercising quasi-judicial function achieved and this object by excluding this chance of arbitrariness and ensuring a degree of fairness in the process of decision making.

The truth is that the Indian legislature is silent to take necessary steps in this matter. It is submitted that the judiciary should prefer its onerous responsibility of eradicating arbitrariness and unreasonableness in administrative adjudication by insisting upon the requirement of giving of reasons as one of the rules of natural justice.

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26. *P.S. Doshi* v. *State of M.P.*, AIR 1990 SC 171.

27. See supra note 21. See also *Rajendra Construction Co*, v, *Maharashtra Housing Board* (2005) 6 SCC 678.

28. (1991) SC 716, 738

29. See Bar Council of India V High Court of Kerala AIR 2004 SC 2227.

30. (2010) 9 SCC 496.