

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/7/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR  
and  
The Honourable Mrs.JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.8475 of 2017  
a n d  
W.M.P.Nos.9267 and 19974 of 2017

M/s. Asveens Forging Pvt Ltd  
rep. By its Director  
Mrs.Bhagyaprabha Dhanasamy  
No.5 Lakshmi Street, Alagappa Nagar  
Kilpauk  
Chennai 600 010.

... Petitioner

Vs

1. The Registrar  
Debt Recovery Appellate Tribunal  
4<sup>th</sup> Floor  
Indian Bank Circle Office  
1 Ethiraj Salai  
Chennai 600 008.

2. The Authorised Officer  
State Bank of India  
Stressed Assets Management Branch  
32 Montieth Road  
"Red Cross Buildings"  
Egmore  
Chennai 600 008.

...

Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari to call for the records pertaining to the proceedings on the file of the first respondent regarding the SARFAESI proceedings and records and quash the impugned order dated 16/3/2017 in RA (SA) No.3 of 20017, issued by the first respondent.

For petitioner ... Ms.G.Jagadeeswari  
For Respondents ... Mr.ML. Ganesh  
for R.2.

**ORDER**

(Order of the Court was made by S.Manikumar,J)

Being aggrieved by the order made in R.A.(SA) No.3 of 2017, dated 16/3/2017, on the file of the Debts Recovery Appellate Tribunal, Chennai, instant writ petition is filed, for a writ of certiorari. Assailing the correctness of the order, Ms.G.Jagadeeswari, made submissions.

2. Facts deduced from the material on record are that in the year 2005, M/s. Asveens Forging Private Limited, approached State Bank of India, Chennai/second respondent, for a cash credit and term loan. Original limit for cash credit was Rs.105 lakhs, and Rs.350 lakhs, as term loan.

3. Writ petitioner has contended that the Company was regular in repayment. Therefore, cash credit was enhanced to Rs.175 lakhs and an additional term loan was sanctioned, to the tune of Rs.60 lakhs, making a total term loan limit, to Rs.329 lakhs and the total sanctioned facility in the year 2008 was Rs.504 lakhs.

4. On account of recession in 2010, the Company could not repay the loan availed. Hence, on 31/3/2010, the account was classified as Non-performing Asset. According to State Bank of India, Chennai/second respondent, the outstanding amount, as on 12/4/2013 was Rs.4,79,69,205/-. Petitioner has contended that consequent to OTS, a sum of Rs.3,71,57,163/- was made. Writ petitioner has further contended that on payment of Rs.2 crores, by the guarantors, without any confirmation from the borrower/writ petitioner, the Bank has also released a portion of the secured asset,.

5. Writ petitioner has further contended that the second respondent filed O.A.No.58 of 2013, for recovery of money due and

payable. Bank has also taken steps for taking possession, under Section 14 of the SARFAESI Act, 2002, and the learned Chief Metropolitan Magistrate, Egmore, has passed, an order, on 10/4/2014.

6. Contending inter alia that the writ petitioner, Mr.S.Dhanasamy and Mrs.Bhagyaprabha Dhanasamy, Directors, came to the knowledge of the order passed by the learned Chief Metropolitan Magistrate, Egmore, in Crl.M.P.No.1017 of 2014, only on 3/8/2015, S.A.SR.No.2678 of 2015 has been filed on 10/8/2015, on the file of the Debts Recovery Tribunal - I, Chennai.

7. Adverting to the above, Debts Recovery Tribunal - I, Chennai, in S.A.SR.No.2678 of 2015, on 10/9/2015, at paragraph Nos.3.3 and 4, ordered, as hereunder:-

“3.3. The applicants are the company and Directors. They are borrowers and guarantors. The respondent Bank issued Possession Notice to the applicants and it

had to be published in newspapers and also affixed on the secured asset. In these circumstances, the applicants' contention that they came to the knowledge about the order of the CMM only on 3/8/2015 is not at all having truth. To stall the recovery proceedings of the respondent Bank only, this application is filed by the applicants. Hence the reason stated for saving limitation is not tenable.

4. In the result, SASR No.2678 of 2015 is rejected as barred by limitation.”

8. Being aggrieved by the above, M/s.Asveens Forging Pvt Ltd., represented by its Director, Mrs.Bhagyaprabha Dhanasamy and two others, have filed R.A.(SA) No.3 of 2017, against S.A.(SR) No.2678 of 2015, under Section 18 of the SARFAESI Act, 2002, before the Debts Recovery Appellate Tribunal, Chennai.

9. I.A.No.148 of 2016 has been filed to condone the delay of 9 days in filing an appeal, which has been allowed. Before the Appellate Tribunal, they reiterated that after the issuance of notice, under Section 13 (2) of the Act, payment of Rs.3.71 crores has been made and further submitted that they would make payment of Rs.15 lakhs to make it more than 80% of the demand under Section 13 (2) of the Act.

10. At this juncture, Mr.ML.Ganesh, learned counsel for the Bank submitted that payment of Rs.3.71 crores was made by the guarantors and not by the borrower.

11. Be that as it may, the Debts Recovery Appellate Tribunal, Chennai, has directed the parties, to maintain status-quo. Material on record discloses that on 15/6/2016, sale notice has been issued, to bring the property, by e-auction, fixed on 4/11/2016.

12. Property has not been sold. Therefore, Bank has issued, another sale notice, dated 4/11/2016, to bring the same property, for auction. Again, it was not sold, and yet sale notices, dated 23/12/2016

and 2/2/2017, respectively, have been issued, to bring the same property, for auction. When the Bank has resorted to measures to sell the said property, the Debts Recovery Appellate Tribunal, Chennai, while testing the correctness of the order made in S.A.SR.No.2678 of 2015, dated 10/9/2015, on the file of the Debts Recovery Tribunal, filed, challenging the order of the learned Chief Metropolitan Magistrate, Egmore, in an application filed under Section 14 of the SARFAESI Act, 2002, has dismissed the appeal, R.A.(SA) No.3 of 2017, as devoid of substance. Correctness of the above said order, is challenged in this writ petition, reiterating the grounds urged.

13. Record of proceeding shows that notice has been ordered, by a Hon'ble Division Bench, on 10/4/2017.

14. Reverting, on the basis of the counter affidavit and typed set of papers, Mr.M.L.Ganesh, learned counsel for State Bank of India, Chennai/second respondent, has made a preliminary objection, to the maintainability of the instant writ petition, on the grounds that Mr.Dhanasamy and Mrs.Baghyaprabha, Directors of Asveens Forgings Pvt

Ltd., have been declared, as insolvents by the Official Assignee, High Court, Madras, and accordingly, a communication, dated 7/12/2015, has been sent to the Bank. He further submitted that when the deponent of the supporting affidavit, to the instant writ petition, has been declared as insolvent, he has no locus, to maintain a writ petition.

15. He further submitted that though oral submissions were made before both the Debts Recovery Tribunal - I, Chennai and the appellate forum, to the effect that application filed under Section 17 of the SARFAESI Act, by the persons declared as insolvents in several proceedings, is not maintainable, both the forums have failed to advert to same. We have gone through the material on record and observe that there are no materials, indicating filing of counter affidavit, to that effect before the said forums. However, Mr.M.L.Ganesh, learned counsel for the Bank submitted that letters, dated 7/12/2015, 21/3/2016, 26/7/2016 and 16/8/2016 of the Official Assignee, High Court, Madras, were filed in the form of typed set of papers before the Appellate forum.

16. Though Mr.M.L.Ganesh, learned counsel for the Bank, contended that institution of the instant writ petition, by Asveens Forgings Private Limited, by one of the Directors of the Company, declared as insolvent, is not maintainable, at this juncture, we are not inclined to advert to the same, for the reason, that going though the order impugned, we find that after summarising and extracting the pleadings and arguments, at paragraph No.7 of the order made in R.A.(SA)No.3 of 2017, the Debts Recovery Appellate Tribunal, Chennai, has come to the following conclusion that “they came to know about about the proceedings of Chief Metropolitan Magistrate, Egmore, Chennai, for the first time in August, 2015, is a false fact”. Thus, in the absence of any counter affidavit, filed before the forum, the forums constituted under the Act, have not adverted to the oral submission. Ultimately, while dismissing the appeal as devoid of substance, at para 8, the Debts Recovery Appellate Tribunal, Chennai, has ordered as hereunder:-

“Considering the aforesaid contentions, of Ld. Counsels and rival contentions of parties and on a perusal of order of Chief Metropolitan Magistrate, dated 10/4/2014 and also on perusal of the impugned order, there appears no mistake on the part of the Chief Metropolitan Magistrate/Presiding Officer. After issuance of notice under Section 13 (2) of the SARFAESI Act, nominal amount has been deposited, which can hardly be presumed to be a sufficient consideration. Ld.PO has rightly dealt with the matter and passed proper order.”

17. Debts Recovery Appellate Tribunal, Chennai, at para 7 of the order in R.A.(SA) No.3 of 2017, dated 16/3/2017, has come to the conclusion that the contention of the appellants therein that they came to the knowledge of the learned Metropolitan Magistrate, Chennai, for the first time in August 2015, is a false statement. Time and again, the Hon'ble Supreme Court has held that reasons are the heart beat of any

decision. Reference can be made to a decision in **M/s.Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors.** reported in **2008 (5) Supreme 281**, wherein the Hon'ble Supreme Court, while testing the correctness of an order passed by the Assistant Commissioner of Sales Tax against the assessment, at Paragraph 10, held as follows:

"10. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless."

18. In **Kranti Associates Private Limited and another vs Masood Ahamed Khan and Others**) reported in **(2010) 9 SCC 496**, wherein, the Hon'ble Supreme Court has considered a catena of decisions, which are extracted hereunder:

"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 recognised 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 v. Union of India* [(1969) 2 SCC 262].

13. In *Keshav Mills Co. Ltd. v. Union of India* [(1973) 1 SCC 380], this Court approvingly referred to the opinion of Lord Denning in *R. v. Gaming Board for Great Britain, ex p Benaim* [(1970) 2 QB 417] and quoted him as saying “that heresy was scotched in *Ridge v. Baldwin* [1974 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 the 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).

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 *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala* [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 the 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, the 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 v. Union of India* [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 the Mines and Minerals (Development and Regulation) Act, 1957, and having regard to the provision of Rule 55 of the Mineral Concession 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 AIR p. 1610, para 8). 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 the Central Government upheld the order of the State Government (see AIR p. 1610, para 9). Therefore, this Court insisted on reasons being given for the order.

20. In *Mahabir Prasad Santosh Kumar v. State of U.P.* [(1970) 1 SCC 764], while dealing with the U.P. Sugar Dealers' Licensing Order under which the licence 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 SCC p. 768, para 7 : AIR p. 1304, para 7.)

21. In *Travancore Rayon Ltd. v. Union of India* [(1969) 3 SCC 868], the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excises 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 SCC p. 874, para 11 : AIR pp. 865-66, para 11).

22. In *Woolcombers of India Ltd. v. Workers Union* [(1974) 3 SCC 318] this Court while considering an award under Section 11 of the 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 SCC pp. 320-21, para 5 : AIR p. 2761, para 5).

23. In *Union of India v. Mohan Lal Capoor* [(1973) 2 SCC 836] this Court while dealing with the question of selection under the 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 SCC pp. 853-54, paras 27-28 : AIR pp. 97-98, paras 27-28).

24. In *Siemens Engg. and Mfg. Co. of India Ltd. v. Union of India* [(1976) 2 SCC 981], 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 SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248], which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). 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. Y.V. Chandrachud, J. (as His Lordship then was) in a concurring but a separate opinion in *Maneka Gandhi* 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 SCC p. 317, para 39 : AIR p. 613, para 39.)

27. In *Rama Varma Bharathan Thampuram v. State of Kerala* [(1979) 4 SCC 782] 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. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In *Gurdial Singh Fijji v. State of Punjab* [(1979) 2 SCC 368] this Court, dealing with a service matter, relying on the ratio in *Capoor*, held that “rubber-stamp reason” is not enough and virtually quoted the observation in *Capoor* 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 p. 377, para 18.)

29. In a Constitution Bench decision of this Court in *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt.* [(1979) 4 SCC 642], while giving the majority judgment Y.V. Chandrachud, C.J. referred to (SCC p. 658, para 29) *Broom's Legal Maxims* (1939 Edn., p. 97) where the principle in Latin runs as follows:

“Cessante ratione legis cessat ipsa lex.”

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 p. 11, para 29.)

31. In *Bombay Oil Industries (P) Ltd. v. Union of India* [(1984) 1 SCC 141], this Court held that while disposing of applications under the 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* and *Siemens Engg.* discussed above.

32. In *Ram Chander v. Union of India* [(1986) 3 SCC 103], 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 Rules. This Court held that the word “consider” occurring in Rule 22(2) must mean that 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 emphasised that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (SCC pp. 106-07, para 4 : AIR p. 1176, para 4).

33. In *Star Enterprises v. City and Industrial Development Corpn. 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 fields 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 justifications for not doing so (see SCC pp. 284-85, para 10).

34. In *Maharashtra State Board of Secondary and Higher Secondary Education v. 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 pp. 738-39, para 22).

35. In *M.L. Jaggi v. 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 p. 123, para 8.)

36. In *Charan Singh v. Healing Touch Hospital* [(2000) 7 SCC 668] a three-Judge Bench of this Court, dealing with a grievance under the 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 emphasising”. (See SCC p. 673, para 11 : AIR p. 3141, para 11 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 *Som Datt Datta v. 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 not require an order confirming proceedings of Court Martial to be supported by reasons. This Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (AIR pp. 421-22, para 10 of the Report.)

38. About two decades thereafter, a similar question cropped up before this Court in *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594]. 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 : AIR para 47 at p. 2000 of the Report and held that 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 proceedings 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 hereinbelow:

“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 utilised under his orders or those of his authorised 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 *Stefan v. General Medical Council* [(1999) 1 WLR 1293 (PC)] it has been held: (WLR p. 1300)

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 p. 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. v. Civil Service Appeal Board, ex p Cunningham* [(1991) 4 All ER 310 (CA)], 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 p. 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, C.J.’s observations [in *R. v.*

*Immigration Appeal Tribunal, ex p Khan (Mahmud)* [1983 (2) ALL ER 420 (CA)] All ER at p. 423, QB at pp. 794-95], 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* [(1991) 4 All. ER 310 (Ca), All ER p. 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 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 Ltd. v. Seatrans Shipping Corpn.* [(2002) 1 WLR 2397]. It has been acknowledged that this trend is consistent with the

development towards openness in the Government and judicial administration.

45. In *English v. Emery Reimbold and Strick Ltd.* [(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 v. 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 refusals 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 : AIR para 11 at p. 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 courts 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 US Court in *Securities and Exchange Commission v. Chenery Corpn.*

[87 L Ed. 626] and *Dunlop v. Bachowski* [44 L Ed 2d 377] in support of its opinion discussed above.

47. Summarising 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 lifeblood 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*.)

(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* EHRR, at 562 para 29 and *Anya v. University of Oxford*, wherein the Court referred to Article 6 of the 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”.

19. With due respect, except extracting the pleadings, the Debts Recovery Appellate Tribunal, Chennai, has not discussed any material, as to how the appellate forum has come to the conclusion that the Directors of the Company had come to know about the proceedings of the Chief Metropolitan Magistrate, Commissioner, Chennai, earlier and

not for the first time in August 2015. The Debts Recovery Appellate Tribunal, Chennai has not given any reasons as to how, the fact averred by the writ petitioner, is false. We would certainly agree with the learned counsel for the Bank, had the forum assigned reasons for the conclusions arrived at, but on the careful consideration of the materials available on record, and in the light of the decisions stated supra, we are of the considered view that the impugned order, deserves to be set aside.

20. Accordingly, **writ petition is allowed** and the order made in R.A.(SA).No.3 of 2017, dated 16/3/2017, in S.A.SR.No.2678 of 2015, on the file of the Debts Recovery Tribunal - I, Chennai, is set aside. While setting aside the above said order, we request the Debts Recovery Appellate Tribunal, Chennai, to pass a speaking order, on merits, within a period of one month, from the date of receipt of a copy of the order, made in this writ petition.

21. Bank is at liberty to file a detailed counter affidavit, on the maintainability of the appeal, on the basis of the communication

received from the official assignee, High Court, Madras. Though M/s.Asveens Forging Pvt Ltd., represented by its Director, has filed W.M.P.No.19974 of 2017, has sought for an amendment of the cause title, in view of the fact that two of the Directors have already been declared as insolvent, which fact has not been gone into by the Tribunal, we are not inclined to allow, any amendment. Accordingly, this Miscellaneous Petition No.19974 of 2017 is dismissed. No costs. Consequently, M.P.No.9267 of 2017 is also closed

(S.M.K.,J) (V.B.S.,J)  
27<sup>th</sup> July 2017

mvs.

Index: yes/No

Internet: Yes/No

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S.MANIKUMAR,J

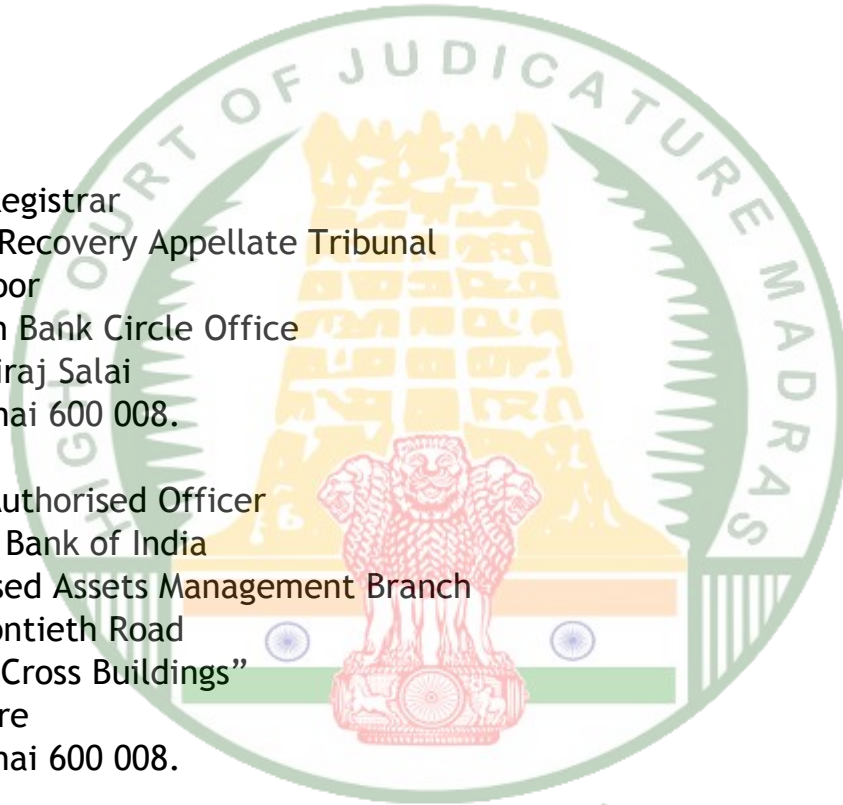
A N D

V.S.BHAVANI SUBBAROYAN,J

mvs.

To

1. The Registrar  
Debt Recovery Appellate Tribunal  
4<sup>th</sup> Floor  
Indian Bank Circle Office  
1 Ethiraj Salai  
Chennai 600 008.
2. The Authorised Officer  
State Bank of India  
Stressed Assets Management Branch  
32 Montieth Road  
“Red Cross Buildings”  
Egmore  
Chennai 600 008.



सत्यमेव जयते

W.P.No.8475 of 2017

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27/7/2017