

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.10562 of 2018
W.M.P.No.12517 of 2018

K.K.Dhanraj

... Petitioner

Vs.

1. The District Magistrate and
District Collector,
Namakkal District,
Namakkal.

2. The Sub Collector,
Namakkal District,
Namakkal.

3. The Authorised Officer and
Chief Manager,
Kodak Mahindra Bank Ltd.,
Sonia Plaza, First Floor,
No.5-330, State Bank Colony,
Junction Main Road,
Near AVR Circle,
Salem 636 004.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records from the 1st respondent by his proceedings, dated 17.01.2018 made in Ref.No.22217/2017-M4, quash the same and direct the 2nd respondent not to take physical possession of the property, situated at Namakkal District, Namakkal Taluk and Town, A.S.Pettai, Kaungattu Palanisamy Street, in S.No.296/4 an extent of 2.43 Acres in this for an extent of 1645 Sq.Ft., of land with building bearing Door No.151, 152, in pursuance of the order passed by the 1st respondent, dated 17.01.2018.

For petitioner

... Mr.K.A.Ramakrishnan

For respondents 1 & 2

... Mr.M.Sricharan Rangarajan,
Addl. Govt. Pleader

O R D E R
(Order of the Court was made by S.MANIKUMAR, J.)

The petitioner has challenged the order of the District Magistrate and District Collector, Namakkal District, Namakkal, 1st respondent herein, dated 17.01.2018 made in Ref.No.22217/2017-M4 and consequently, sought for a direction to the Sub Collector, Namakkal District, Namakkal, 2nd respondent herein, not to take physical possession of the property, situated at Namakkal District, Namakkal Taluk and Town, A.S.Pettai, Kaungattu Palanisamy Street, in S.No.296/4 an extent of 2.43 Acres in this for an extent of 1645 Sq.Ft., of land with building bearing Door No.151, 152, in pursuance of the order passed by the 1st respondent, dated 17.01.2018.

2. Short facts leading to this writ petition are that the petitioner is carrying on business of trading Maize and all kinds of Grains and Dry Fish, in the name and style of M/s.Madhura Traders. He approached Kodak Mahindra Bank Ltd., Salem, for financial assistance to improve business. The Bank has sanctioned over draft facility to the limit of Rs.40 Lakhs and the same was enhanced to Rs.90 Lakhs. For the said loan, the petitioner has created an equitable mortgage, by depositing of title deeds, in respect of the property, situated at S.No.296/4, T.S.No.13/9, New Door No.151 and 152, measuring an extent of 1645 Sq.Ft., of land, with building situated at Namakkal Town, A.S.Pettai, Karunkattur Palanisamy Street, Namakkal, in favour of the 3rd respondent-Bank.

3. It is the case of the petitioner that due to heavy loss in the business, he was unable to repay the entire dues, due to which, his loan account was declared as NPA and therefore, the Bank has issued demand notice, dated 28.01.2016. Thereafter, he was issued with a possession notice, dated 28.03.2016, calling upon him to pay a sum of Rs.95,42,105/-. On 08.07.2016, the Bank has issued sale notice.

4. Challenging the possession notice, son and daughter of the petitioner, viz., Mr.D.Nedunsezhain and Mrs.D.Gowsalya, have filed an application in S.A.No.308 of 2016, under Section 17 of the SARFAESI Act, 2002, before the Debts Recovery Tribunal at Madurai, claiming that the properties mortgaged by him, in favour of the respondent-Bank, are co-parcenary joint family properties. That apart, they have filed a suit in O.S.No.167 of 2016, on the file of the learned Principal Judge, Namakkal, seeking for a

declaration, declaring the mortgage created by him, in favour of the Bank, with respect to 2/3rd undivided share, as null and void and not binding upon them. In the said suit, they have also sought for a consequential relief for division of the suit property into three equal shares and allot and deliver possession of such shares.

5. In the mean time, the 3rd respondent-Bank has filed an application, under Section 14 of the SARFAESI Act, before the District Magistrate and District Collector, Namakkal District, Namakkal, 1st respondent herein, for taking physical possession of the mortgaged property. In the said application, son and daughter of the petitioner have filed a representation, dated 02.03.2018, seeking to implead them in the said proceedings. As no order was passed in the said representation, they have filed W.P.No.5775 of 2018, before this Court for impleadment, by considering the abovesaid representation. While declining the prayer for a Mandamus, this Court, by order, dated 15.03.2018, observed that it is for the District Collector, Namakkal District, Namakkal, 1st respondent herein, to decide, as to whether, they should be given an opportunity in the proceedings, under Section 14 of the SARFAESI Act, 2002.

6. It is the further case of the petitioner that when both the application in S.A.No.308 of 2016 and suit in O.S.No.1670 of 2016, are pending before the Debts Recovery Tribunal, Madurai and the Principal Judge, Namakkal, the District Collector, Namakkal District, Namakkal, 1st respondent herein, has passed the impugned order, dated 17.01.2018, authorizing the Sub Collector, Namakkal District, Namakkal, 2nd respondent herein, to take possession of the mortgaged property and handover the same to the 3rd respondent-Bank. Hence, the petitioner has filed the present writ petition, for the relief, as stated supra, on various grounds.

7. Mr.M.Sricharan Rangarajan, learned Additional Government Pleader appearing on behalf of respondents 1 and 2 submitted that the order of the District Collector-cum-District Magistrate, is not adjudicatory in nature and therefore, suffice that the District Magistrate-cum-District Collector, Namakkal, 1st respondent herein, considers the averments made in the application, filed under Section 14 of the SARFAESI Act, 2002 and on the abovesaid grounds, prayed for dismissal of the writ appeal.

Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Order impugned, dated 17.01.2018, passed by the District Collector-cum-District Magistrate, Namakkal District, under Section 14 of the SARFAESI Act, 2002, is reproduced hereunder:

"Application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, submitted by Authorized Officer, M/s.Kotak Mahindra Bank Ltd., Salem Branch, hereby solemnly affirms and states as follows:

1. The petitioner states that M/s.Kotak Mahindra Bank Ltd., having its branch office at Sonia Plaza, First Floor, 5-330, State Bank Colony, Junction Main Road, Near AVR Circle, Salem 636 004, represented by its Authorised Officer.

2. The petitioner states that the address for service all notices and processes of the petitioner and the respondent are stated above.

3. The petitioner states that the respondents herein had approached to request for financial facility overdraft of Rs.40,00,000/-, against schedule of property. And the petitioner sanctioned the loan amount of Rs.40,00,000/-, vide sanction letters, dated 27.11.2013 and addendum sanction letter, dated 18.02.2013. In 2014, at the request of the respondent, the petitioner after due process, existing over draft facility enhanced to Rs.90,00,000/- on 09.06.2014.

4. The petitioner further submits that the respondent herein on the terms and conditions more particularly mentioned in the said agreement under which the respondent agreed and undertook to repay the said loan amount of Rs.90,00,000/- interest 14% per annum. In 2014, at the request of respondent, petitioner has enhanced existing facility to Rs.90,00,000/- on 09.06.2014.

5. The petitioner states that the respondents neglected to repay the outstanding amount due to the petitioner and continued to be indifferent and therefore, in order to realize the loan facilitates extended to the Respondent, the petitioner was left with no other alternatives than to initiate action under the Securitization Act. The petitioner issued a Demand Notice to the respondent herein in accordance with the provisions u/s.13(2) of the SARFAESI Act, 2002, calling upon the borrower, co-borrowers and guarantors to pay the outstanding loan amount of Rs.96,42,105/- (Rupees Ninety Five Lakh Forty Two

Thousand One Hundred Five Only) together with future interest, cost, charges, etc., within 60 days from the date of the said notice.

(6) The petitioner states that also issued the symbolic Possession Notice, dated 28.03.2016 pm, under Section 13(2) of the SARFAESI Act, 2002 and taken out Paper Publication in terms of sub-rule 8(1). The Possession Notice was published in 'INDIAN EXPRESS' on 07.07.2016.

(7) The Petitioner submits that despite repeated demands, the respondent is refusing to hand over the residential building which is a mortgaged property and till date the possession is not handed over to the petitioner. The petitioner submits that the said demand notice was sent to the respondent on 23.01.2016. The Tender cum Auction Sale Notice was affixed in the properties and published in the two newspapers as contemplated under Rule 8 of the Security Interest (Enforcement) Rules, 2002.

8. The Petitioner submits that the sum due to the petitioner from the respondent herein is Rs.1,10,59,447/- (Rupees One Crore Ten Lakhs Fifty Nine Thousand Four Hundred and Forty Seven Only) as per the Statement of Accounts, dated 01.10.2014.

9. The petitioner states that the bank require the physical possession of the secured assets for selling to enable us to recover the dues. Hence, the petitioner bank have filed petition under Section 14 of the SARFAESI Act, 2002.

10. The petitioner submit and declare that there is no stay or injunction granted by any Courts or Tribunals for taking physical possession of the secured Assets under the provisions of the SARFAESI Act, 2002.

SCHEDULE OF PROPERTY

(Propety of Mr.Dhanraj, S/o.Kumara Gounder Kandasamy)

In Namakkal Registration District, Namakkal Taluk and Town, A.S.Pettai, Karungattu Palanisamy Street, in Survey Number 296/4 for this act per Town Survey Ward A, Block-6, T.S.No.13/9 for an extent of 0.9834.0 Hectare (2.43 Acres) in this for an extent of 1645 Sq.Feet of land with building therein bearing New Door No.151, 152 Old Door No.18D2B1, 18D2A within the following boundaries:-

Boundaries for an extent of 1645 sq.ft.

On the North by Land of Dhanalakshmi
On the South by Land of Nachimuthu
On the East by 20 feet wide road
On the West by Land of Varadharajan

Measurements:-

East - West on the North 41 3/4 Feet
East - West on the South 40 1/2 Feet
North - South on the East 40 1/4 Feet
North - South on the West 39 3/4 Feet

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Section 14(1) provides that, "...the secured creditor may for the purpose of taking possession or control of any such secured asset, request, in writing the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be, the situated or found, to take possession thereof and the Chief Metropolitan Magistrate or as the case may be District Magistrate shall, on such request being made to him.

A) take possession of such asset and documents relating thereto; and

B) forward such asset and documents to the secured creditor.

2) For the purpose of securing compliance with the provisions of sub-section (1) the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used such force, as may, in his opinion be necessary.

3) No Act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any Court or before any authority."

Under the powers conferred u/s.14(1) and 14 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the District Magistrate and District Collector is empowered to take possession of the secured assets of property mentioned in the schedule above and to handover it to the Authorised Officer, Kotak Mahindra Bank Ltd., Salem Branch.

Hence, the Sub Collector, Namakkal is hereby authorised to take possession of the property mentioned in the schedule above immediately with police protection, if needed, and handover the same to the Authorised Officer, Kotak Mahindra Bank Ltd., Salem Branch, under proper

acknowledgement, and intimate the fact to this office immediately.

sd/- M.Asia Mariam,
District Magistrate and
District Collector, Namakkal.

9. It is relevant to extract Section 14 of the SARFAESI Act, 2002, as follows:

"14.(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

10. Perusal of the impugned order shows that the District Magistrate cum District Collector, Namakkal, 1st respondent herein, has summarised the averments made in the supporting affidavit to the application, filed under Section 14 of the SARFAESI Act, 2002. Exercising the powers conferred under the said Section, passed orders. Bare reading of the section makes it clear that while exercising powers under Section 14 of the SARFAESI Act, 2002, the District Magistrate cum District Collector, Namakkal, 1st respondent herein, has to satisfy himself with the contents of the affidavit and pass suitable orders, for the purpose of taking possession of the secured assets within a

period of thirty days, from the date of application, for the reasons to be recorded in writing. For any reason, such order could not be passed, within a period of thirty days, the same can be done, as per the 2nd proviso to Section 14 of the SARFAESI Act, 2002.

11. Though the order of the District Magistrate cum District Collector, Namakkal, 1st respondent herein, is not adjudicatory in nature, it is well settled that even an administrative order, requires the satisfaction of the authority, who passes an order and reasons should be recorded, which in the case on hand, is conspicuously absent. On the aspect of reasons, it is worthwhile to consider a decision in *Kranti Associates Private Limited and another vs Masood Ahamed Khan and Others* reported in (2010) 9 SCC 496, wherein, the 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.' " सत्यमेव जयते

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".

12. The expression "satisfying with the contents of the affidavit, pass suitable orders", used in the enactment, cannot be brushed aside. Whether the order to be passed under Section 14 of the SARFAESI Act, 2002, is adjudicatory or administrative or not, satisfaction of the said authority and reasons, to be recorded, should find place in the order, otherwise the said order would tantamount to non-application of mind.

13. In the light of the above decisions and discussion, we are of the view that the impugned order, dated 17.01.2018, of the District Collector cum District Magistrate, Namakkal District, has to be set aside. Accordingly, the same is set aside and the matter is remitted back to the District Collector cum District Magistrate, Namakkal District, to pass orders, within a period of one month, from the date of receipt of a copy of this order, in consonance with the statutory provisions and the law declared.

14. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

skm/dm

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The District Magistrate and
District Collector,
Namakkal District,
Namakkal.

2. The Sub Collector,
Namakkal District,
Namakkal.

+1 CC TO MR.K.A.RAMAKRISHNAN Advocate SR.NO. 39508

+1 CC TO THE GOVERNMENT PLEADER Advocate SR.NO. 40397

Writ Petition No.10562 of 2018

AD (CO)

ASK (09/08/2018)