IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16195 of 2020
With
CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2021
In
R/SPECIAL CIVIL APPLICATION NO. 16195 of 2020

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RAKESHBHAI JAYANTILAL PATEL
Versus
STATE OF GUJARAT

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Appearance:
MR. H.M. PARIKH, SENIOR ADVOCATE WITH MR HARIBHAI J PATEL(9810) for the Petitioner
MR. K.M. ANTANI, AGP for the Respondent Nos. 1, 2
MR. G.M. JOSHI, SENIOR ADVOCATE WITH MS MINI M NAIR(2689) for the Respondent No. 3

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 22/02/2021

ORAL ORDER

1. Heard learned Senior Advocate Mr. H.M. Parikh assisted by learned advocate Mr. Haribhai J. Patel for the petitioner, learned Senior Advocate Mr. G.M. Joshi assisted by learned advocate Ms. Mini M. Nair for the applicant – original respondent no.3 and learned AGP Mr. K.M. Antani for the respondent nos.1 and 2 – State through video conference.

2. ***Rule*** returnable forthwith. Learned advocate Ms. Nair waives service of notice of rule on behalf of the respondent no.3 and learned AGP waives service of notice of rule on behalf of the respondent – State.

3. Having regard to the controversy, which arises in this petition in narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken-up for final hearing instead of deciding the application for vacating interim relief filed by the respondent no.3 - Unjha Municipality.

4. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the following reliefs :

> *"(A) To admit this petition.*
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> *(B) To issue the writ of mandamus or any other writ in the nature of mandamus by way of quashing and setting aside the impugned award dated 27/11/2020 passed by the Ld. Commissioner of Municipalities, in muni/S.R. no.15/2020 (annex at annexure-A) to this Appeal in the interest of justice.*
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> *(C) To stay the implementation, execution and operation of the impugned order dated 27/11/2020 passed by the Ld. Commissioner of Municipalities in muni/S.R. no.15/2020 (annexed at annexure-A) to this petition) during the pendency of admission, hearing and final disposal of the petition by way of an interim relief in the interest of justice.*
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> *(D) Be pleased to pass such other and further reliefs as may be deemed just and proper by this Hon'ble Court in the facts and circumstances of the case."*

5. At the outset the learned Senior Advocate Mr. H.M. Parikh assisted by learned advocate Mr. Haribhai Patel for the petitioner

submitted that the Commissioner of Administration of Municipalities - respondent no.2 has passed the impugned order dated 27th November, 2020 without assigning any cogent reason dealing with the submissions made by the petitioner. It was submitted by Mr. Parikh that only conclusive findings are recorded rejecting the submissions made on behalf of the petitioner on merits and the authority has failed to give any reason for removing the petitioner as member of the respondent no.3 Municipality under Section 37(1) of the Gujarat Municipality Act, 1963 (for short 'the Act, 1963').

6. The brief facts of the case are that the petitioner was elected as member of the respondent no.3 Municipality in the year 2015. The petitioner was partner of M/s. Jay Vijay Construction, who purchased the property situated at Survey no.6590 in Town Planning Scheme no.1 in Unjha and started commercial construction upon the said property. According to the petitioner, the said partnership firm applied for development permission before the respondent no.3 on 11th July, 2019, which was rejected on 27th September, 2019.

7. According to the petitioner, on the basis of application given by the third party and upon the letter of the Chief Officer of the respondent no.2, a show cause notice was served upon the petitioner under Section 37 of the Act, 1963 on the ground that by way of putting unauthorized construction on the land in question without taking permission of change of use, the petitioner has misused the post held by him as Councilor of the respondent no.3 –

Municipality.

8. This Court (Coram : Hon'ble Mr. Justice Vipul M. Pancholi) passed the following order on 22nd December, 2020.

> *"Notice returnable on 4th February, 2021. Till the next date of hearing, impugned order is stayed."*

9. Learned Senior Advocate Mr. Parikh submitted that the impugned order is contrary to what the Supreme Court has held in case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and Ors.,* reported in *(2012) 4 SCC 407*, wherein it is held as under with regard to the giving a reasoned order by the quasi judicial authority.

> *"38. It is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.*
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> *39. In Kumari Shrilekha Vidyarthi v. State of U.P. & Ors., this Court has observed as under:– (SCC p. 243, para 36)*
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> > *36. … "Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always."*
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> *40. In L.I.C. Of India & Anr. v. Consumer Education*

and Research Centre & Ors., AIR 1995 SC 1811, this Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. A similar view has been reiterated by this Court in Union of India v. M.L. Capoor & Ors., AIR 1974 SC 87; and Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors., AIR 1993 SC 935.

41. In State of West Bengal v. Atul Krishna Shaw & Anr., AIR 1990 SC 2205, this Court observed that :

> *"7. ...Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."*

42. In S.N. Mukherjee v. Union of India, AIR 1990 SC 1984, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43. In Krishna Swami v. Union of India & Ors., AIR 1993 SC 1407, this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed:

> *"47. ...Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was*

activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21."

44. This Court while deciding the issue in Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors., (2010) 13 SCC 336, placing reliance on its various earlier judgments held as under:

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

"3. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind."

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

> *45. In Institute of Chartered Accountants of India v. L.K. Ratna & Ors., AIR 1987 SC 71, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held:*
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> > *"30. … In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under S. 22 A of the Act. The exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding".*
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> *46. The emphasis on recording reason is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out, the inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance."*

10. Relying upon the aforesaid decision of the Apex Court, learned Senior Advocate Mr. Parikh submitted without going into

the merits of the matter to relegate the petitioner again before the respondent no.2 with a request to direct the respondent no.2 to pass detail reasoned speaking order on the submissions made by the petitioner.

11. On the other hand, learned Senior Advocate Mr. Gautam Joshi assisted by Ms. Mini Nair submitted that the respondent no.2 may pass a speaking reasoned order considering the submissions made by the petitioner within a stipulated time.

12. This Court in case of *Vasantiben Vashrambhai Galchar Vs. Commissioner, Municipalities Administration, Gujarat State* vide order dated 5th February, 2020 in similar facts has held as under :-

> *"12. Having heard the learned advocates for the respective parties and having gone through the materials on record and on perusal of the impugned order dated 23.12.2020 passed by respondent no. l while exercising powers under section 37 of the Act, 1963, it emerges that respondent no.1 narrated charges against the petitioners in the show cause notice dated 6.8.2020 and thereafter recorded the written submissions tendered by the petitioners on 15.10.2020 and thereafter recorded the findings, without giving any justification for the conclusion for each of the charges which is held to be proved against the petitioners or charges which are held to be not proved against the petitioners and to arrive at such conclusion only one line observation is made in the findings given in the impugned order. For example, apropos charge no. 1 with regard to the approval granted by letter dated 5.6.2018 of Engineer of Water Supply and Sewage Board, it was submitted by the petitioners that the work was approved by resolution no. 119(1), 119(42) in the meeting held on 27.3.2018. Rejecting such explanation of the*

petitioner, it was only stated in one line that such defense is not acceptable because the tender was accepted at higher price without disclosing as to what was the actual tender price and no reason is assigned as to how it is given at higher price and for that purpose what inquiry was made as contemplated under section 37 of the Act, 1963 and in what manner loss is caused to Municipality. In each and every finding given for each and every charge, the respondent no.1 has not referred to any reason or finding arrived at as per the inquiry made as contemplated under section 37. For such purpose, it would be germane to refer to section 37 of the Act, 1963 which reads thus :

> *"37. Removal from office(1) The State Government may remove from office(a) any councillor of a municipality, [on its own motion or on receipt of] a recommendation of the municipality in that behalf supported by a majority of the total number of the then councillor of the municipality; or*
>
> *(b) any president or vice president of a municipality.*
>
> *If, after giving the councillor, president or as the case may be vice president an opportunity of being heard and giving due notice in that behalf to the municipality and after making such inquiry as it deems necessary, the State Government is of the opinion that the councillor, president or as the case may be, vice president has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties under this Act.*
>
> *(2) A president or vice president removed under subsection (1)shall not be eligible for reelection as a president or vice president during the reminder of the term of the municipality."*

13. On perusal of the section 37 of the Act, it prescribes that the State Government has power to remove any councillor of Municipality on its own motion or on receipt of a recommendation of the Municipality in that behalf, supported by a majority of the total number of the then councillors of the Municipality or any President or Vice President of the Municipality after giving due notice on that behalf to the Municipality and after making such inquiry as it deems necessary. In facts of the case, on perusal of impugned order, there is no reference to any such inquiry which has been held by the authority. It is true that the show cause notice dated 6.8.2020 refers to financial loss to the Municipality alleged to have been caused for 13 charges levelled against the petitioners but at the same time in the impugned order, no reason much-less any finding to that effect is recorded by respondent no.1. It is a trite law to mention that how the authority discharging administrative function while exercising the powers under quasi judicial jurisdiction should pass the order. However, as the impugned order is a classic example of total disregard to such settled legal position as to how such orders are required to be passed, it would be necessary again to refer to various decisions, wherein guidance and guidelines are given to the authorities to keep the same in mind while passing the orders whereby the fate of the petitioners are decided. Therefore, it would be necessary to refer to the following decisions of the Apex Court as well as High Court :

i) The Bombay High Court in case of G.J. Kanga and another v. S.S. Basha reported in (1993) 95 BOMLR 632, has held as under:

> *"14. A quasi-judicial function is one which stands midway between a judicial and an administrative function.*
>
> *I. On the one hand, it differs from a purely*

administrative act in the following respects :

(a) A purely administrative act does not decide any rights of private parties though it may affect them. But a quasijudicial act determines private rights with a binding force. R. v. Dublin Corpn., (1878)2 Ir. 371(367) : R. v. Local Govt. Bd., (1902)2 I.R. 349(373).

(b) An administrative act may be non-statutory and does not necessarily require statutory authority. But a body is called quasi-judicial only when it has statutory authority to discharge the function in question.

(c) A purely administrative body has no procedural obligation, unless it is specifically imposed by state. E.G. Frankin v. Minister of Town & Country Planning, reported in (1947)2 All E.R. 289(295) H.L. ; University of Celyon v. Fernande, reported in (1960)1 All E.R. 631(637) P.C. ; Ridge v. Baldwin, reported in (1963) 2 All E.R. 66(75; 86; 109). But as soon as function is held to be 'quasi-judicial', the law requires that the rules of natural justice must be observed in discharging that function. Union of India v. Verma.

(d) While an administrative or ministerial function may be delegated, a judicial or quasi-judicial function cannot, in the absence of express statutory provision, be delegated, Vine v. National Dock Labour Bd., reported in (1959)3 All E.R. 393(950) H.L.

(e) What distinguished a judicial from an administrative decision is that the decision of a Court is objective, i.e. arrived at by the application of fixed standards; even the discretion which a Court of Justice is allowed to exercise in some particular cases, has to be exercised in accordance with certain fixed principles. Sharp v. Wakefield, reported in (1891) A.C. 173(179). On the other hand, the decisions of administrative authorities are usually subjective in the sense that they are reached without applying any standard at all,

except that of expediency or policy. Labour Relations Board v. J.E.I. Works, reported in (1949) A.C. 134(149).

15. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice; when there is no such obligation, the decision is called 'purely administrative'. Ridge v. Baldwin, reported in (1963)2 All E.R. 66(7374,113) H.L.

16. It follows from the above that the quasi-judicial obligation to follow the principles of natural justice attaches to a function or the exercise of a power; and much of confusion would arise if it is supposed to attach to an office. Ridge v. Baldwin, (supra). It is possible for judicial officer to pass a particular order which is ministerial and for an administrative officer to make an order or arrive at a decision which is quasi-judicial, Errington v. Minister of Health, reported in (1935)1 K.B. 249 C.A."

ii) The Supreme Court in case of S.N. Mukherjee v. Union of India reported in 1990 (4) SCC 594,has held as under :

"33. Tarachand Khatri v. Municipal Corporation of Delhi & Others, [1977] 2 SCR 198 was a case where an inquiry was conducted into charges of misconduct and the disciplinary authority, agreeing with the findings of the Inquiry Officer, had imposed the penalty of dismissal. The said order of dismissal was challenged on the ground that the disciplinary authority had not given its reasons for passing the order. The said contention was negatived by this Court and distinction was drawn between an order of affirmance and an order of reversal. It was observed (SCR p.208 : SCC p.480, para 19):

" ..... 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 conclusions arrived at and the recommendations made by the Inquiry Officer in view of the scheme of a particular enactment or the rules made there under, it would be laying down the proposition too broadly to say that even an ordinary concurrence must be supported by reasons."*

34. In Raipur Development Authority and Others v. Chokhamal Contractors and Others, [1989] 2 S.C.C. 721 a Constitution Bench of this Court was considering the question whether it is obligatory for an arbitrator under the Arbitration Act, 1940 to give reasons for the award. It was argued that the requirement of giving reasons for the decision is a part of the rules of natural justice which are also applicable to the award of an arbitrator and reliance was placed on the decisions in Bhagat Raja case (Supra) and Siemens Engineering Co. case (Supra). The said contention was rejected by this Court. After referring to the decisions in Bhagat Raja case (Supra); Som Datt Datta case (Supra) and Siemens Engineering Co. case (Supra) this Court has observed (SCC pp. 75152, para 35) :

> *"It is no doubt true that in the decisions pertaining to Administrative Law, this court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rules. It would be in the interest of the world of commerce that the said rule is confined to the area of Administrative Law ..... But at the same time it has to be borne in mind that what applies generally to settlement of disputes by authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes."*

35. The decisions of this Court referred to above

indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. The said purpose would apply equally to all

decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

37. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (P 80)

Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administrative Law, 6th Edn. P. 548). In Siemens Engineering Co. case (Supra) this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram parlem, a basic principle of natural justice which must inform every quasi-judicial process." This decision proceeds on the basis that the two well known principles of natural justice, namely (i) that no man should be a Judge in his own cause and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in A.K. Kraipak and Others v. Union of India and Others, [1970] 1 SCR 457, wherein it has been held:

> *"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (i) no one shall be a Judge in his own cause (nemo dabet esse judex propria causa) and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."*

38. A similar trend is discernible in the decisions of English Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See: R. v. Deputy Industrial Injuries Commissioner ex P.

Moore; Mahon v. Air New Zealand Ltd.)

39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that affect as those contained in the Administrative Procedure Act, 1946 of U.S.A. And the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would out weight the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

iii) This Court in case of Testeels Ltd. v. N.M. Desai and another reported in AIR 1970 Guj 1, has held as under :

> *"3. There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set up. Our Constitution posts a welfare State in which every citizen must have justice social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socioeconomic justice and remove the existing imbalance in the socioeconomic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some of these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J., in Jaswant Sugar Mills's case, AIR 1963 SC 677 (supra), a quasi-judicial decision involves the following three elements:*
>
> *(1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of preexisting legal rules:*
>
> *(2) It declares rights or imposes upon parties obligations affecting their civil rights; and*
>
> *(3) the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a*

> *dispute be on question of facts, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.*

The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter "solely on the facts of the particular case solely on the material before them and apart from any extraneous considerations" by applying "preexisting legal norms to factual situations". The duty to act judicially excludes arbitrary exercise of power and it is, therefore, essential to the rule of law that the duty to act judicially is strictly observed by the administrative authorities upon whom it is laid. If any departure from the observance of the duty to act judicially could pass unnoticed, it would open the door to arbitrariness and make a serious inroad on the rule of law. To quote the words of the Supreme Court in S. G. Jaisinghani v. Union of India, AIR 1967 SC 1427: ". . . . .. the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law." Now the necessity of giving reasons is one of the most important safeguards to ensure observance of the duty to act judicially. If the administrative officers can make orders without giving reasons, such power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But if

reasons are required to be given for an order, it will be an effective restraint on such abuse as the order, if it discloses extraneous or irrelevant considerations or is arbitrary, will be subject to judicial scrutiny and correction. As observed by Subba Rao J., as he then was, in Madhya Pradesh Industries Ltd., v. Union of India, AIR 1966 SC 671, "A speaking order will at its best be a reasonable and at its worst at least a plausible one". The condition to give reasons introduces clarity, checks the introduction of extraneous or, at any rate, minimises arbitrariness in the decision making process it gives satisfaction to the party against whom the order is made and guarantees consideration of all relevant factors and discharge of his functions by the officer in accordance with the requirement of law. We may in this connection usefully quote the following passage from "American Administrative Law" by Bernard Schwartz at page 163:

> *"The value of reasoned decisions as a check upon the arbitrary use of administrative power seems clear....*
>
> *The right to know the reasons for a decision which adversely affects one's person or property is a basic right of every litigant (and that whether the forum be judicial or administrative). But the requirement that reasons be given does more than merely vindicate the right of the individual to know why a decision injurious to him has been rendered. For the obligation to give a reasoned decision is a substantial check upon the misuse of power. The giving of reasons serves both to convince those subject to decisions that they are not arbitrary and to ensure that they are not, in fact, arbitrary. The need publicly to articulate the reasoning process upon which a decision is based, more than anything else, requires the Magistrate (judicial or administrative) to work out in his own mind all the factors which are present in a case. A decision supported by specific findings and*

> *reasons is much less likely to rest on caprice or careless consideration. As Judges Jerome Frank well put it in language as applicable to decisionmaking by administrators as by trial judges, the requirement of reasons has the primary purpose of evoking care on the part of the decider. . . . .”*

If the administrative officers having a duty to act judicially are required to set forth in writing the mental processes of reasoning which have led them to the decision, it would to a large extent help to ensure performance of the duty to act judicially and exclude arbitrariness and caprice in the discharge of their functions. The public should not be deprived of this only safeguard.

4. Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to

arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction.

5. This has always been regarded as a most important reasons in the United States for insisting that quasi-judicial decisions must show reasons on their face. To quote from Schwartz's "American Administrative Law" at page 166:

> *"In the United States, perhaps the most prominent reasons advanced for the requirements of reasoned decisions is the role of such decisions in facilitating review by the courts. If the bases of administrative decisions are not articulated, it is most difficult for a reviewing court to determine whether the decision is a proper one. 'We must know what a decision means before the duty becomes ours to say whether it is right or wrong', reads an often cited statement of Gardozo J., ... for judicial control to be of practical value, the administrative tribunal or agency, 'in making its order, should not make it an unspeaking or unintelligible order, but should in some way, state upon the face of the order the element which had led to the decision'. The words quoted are from a noted judgment of Lord Cairns, L.C., in which he laid down the distinction between 'speaking' and 'unspeaking' orders, which has become of basic importance in present day English Administrative law. When Lord Cairns speaks of an 'unspeaking or unintelligible order', he obviously means an order which gives no reasons. If the administrator does not give reasons, he, in effect, disarms the exercise of the High Court's*

> *supervisory jurisdiction. In such a case, the Court cannot examine further than the face of the challenged decision, which, in Lord Sumner's famous phrase, 'speaks' only with 'inscrutable face of a sphinx'."*

It is therefore necessary for giving full meaning and content to the power of judicial review conferred on the High Court and the Supreme Court by the Constitution that every administrative officer exercising quasi-judicial functions must make a speaking order, that it, give reasons in support of the order. If the order speaks only with the "inscrutable face of a sphinx" it would be impossible for the High Court and the Supreme Court to effectively exercise their power of judicial review by means of certiorari.

6. This view is not only supportable on principle but it is also in consonance with the trend of juristic thought in the United States where there is considerable development in the field of administrative law in recent times. In the United States, as will be evident from the two passages from Schwartz's "Amercian Administrative Law" quoted above, the American Courts have always insisted that administrative decisions should be speaking ones, that is, they must contain at least the findings upon which they are based and the reasons which have prevailed with them in introducing this requirement are the same two reasons which have found favour with us. It is also interesting to find that the administrative law in France has moved in the same directions. For a long time Conseil d'Etat consistently refused to require that the administration should give reasons for its decisions in the absence of a statutory provision imposing that requirement. But in a decision rendered by it in 1950 Conseil d'Etat opened, in the words of one commentator, "a first breach in the established jurisprudence under which in the absence of a legal text requiring it the decisions of the administrative authorities need not be reasoned ones" and annulled an administrative decision in which no reasons were given. The Commissaire du gouvernment there advocated a bold

departure from the prior case law and stated that the Conseil should require reasoned decision in every case in which the administrator was exercising quasi-judicial functions, even though the Legislature did not expressly impose such requirement. Otherwise, he asked, how could the Conseil really determine the validity of a challenged decision? In its decision adopting the approach of the Commissaire, the Conseil d'Etat stated that the obligation to give reasons was imposed "in order to enable the reviewing court to determine whether the directions and prohibitions contained in the law have been followed." This is the same reason which has motivated the American Courts in requiring that administrative decisions must contain findings that show their basis and it is the same reason which has appealed to us for taking the view that in India too, as in the United States and France, administrative officers exercising quasijudicial functions must make speaking orders.

7. The position in England is of course different and therefore strongest reliance was placed upon it on behalf of the State in England, though in the Liquor Licence Cases decided in the latter half of the nineteenth century the view was taken that the Licensing Justices who were empowered to refuse liquor licences on four specified grounds must specify the grounds for refusal in the order made by them and if they failed to do so, an order of mandamus would issue to compel them to hear and determine the applications according to law, it appears that, as a general rule, no duty to give reasons in support of a quasijudicial order is recognised by the Courts. The decisions in the Liquor Licence Cases are regarded as somewhat anomalous and the considered view has always been that a quasijudicial authority is not subject to any duty to give reaosns for its decision. The decision in Robinson v. Minister of Town and Country Planning, (1947) KB 702 clearly seems to suggest that even if the Minister exercises quasi-judicial functions, there is no obligation on him to give reasons for his decision. This view is also implicit in the decision of the Court of Appeal in Rex v.

Northumberland Compensation Appeal Tribunal (1952) 1 K.B., 338. In that case, the Court held that a quasi-judicial decision of an administrative tribunal could be quashed by certiorari for error of law where it "spoke" its error on its face. But where the decision was not contained in such a "speaking order", the court would not intervene. There is implicit in this decision the recognition of the possibility that a quasi-judicial authority may not make a speaking order. This being the position, the Donoughmore Committee on Ministers' powers in its report made in 1932 formulated the principle that a party is entitled to know the reasons for the decision, be it judicial or quasi-judicial and recommended acceptance of this principle as a principle of natural justice. Pursuant to this recommendation the British Parliament when it came to enact the Tribunals and Inquiries Act, 1958 introduced Section 12 in that Act which now expressly requires that in certain circumstances, the administrative tribunals specified in the First Schedule as also the Ministers holding a statutory inquiry must give reasons for the decision. Thus what the Courts failed to achieve by the process of judicial construction had to be set right by Parliamentary legislation. But what the Parliament did serves to emphasize the necessity of giving reasons in support of a quasijudicial decision.

8. So much on principle. But quite apart from principle, there is in our view clear authority for the proposition that every quasi-judicial decision must be supported by reasons. The germ of this principle is to be found in the decision of the Supreme Court in Express Newspaper (Private) Ltd., v. Union of India, AIR 1958 SC 578. In that case the validity of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 was challenged inter alia on the ground that the impugned Act did not provide for the giving of reasons for its decision by the Wage Board and thus render the petitioner's right to approach the Supreme Court for the enforcement of their fundamental rights nugatory. Dealing with this contention. N. H. Bhagwati J.,

speaking on behalf of the Supreme Court said:

> *"It is no doubt true that if there was any provision to be found in the impugned Act which prevented the Wage Board from giving reasons for its decision, it might be construed to mean that the order which was thus made by the wage board could not be a speaking order and no writ of certiorari could ever be available to the petitioners in that behalf. It is also true that in that event this Court would be powerless to redress the grievances of the petitioners by issuing a writ in the nature of certiorari and the fundamental right which a citizen has of approaching this Court under Art. 32 of the Constitution would be rendered nugatory."*

The Supreme Court, however, took the view that there was no provision in the main Act which prevented the Wage Board from giving reasons for its decision and the challenge was negatived on that ground. But these observations undoubtedly support, the second reason which we have given for taking the view that reasons must be given in support of every quasi-judicial decision."

iv) The Supreme Court in case of State of Orissa & others v. Chandra Nandi (judgment dated 1.4.2019 in Civil Appeal No.10690/2017), has held as under :

> *"10. This Court has consistently laid down that every judicial or/and quasi-judicial order passed by the Court/Tribunal/Authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. The parties to the lis and so also the appellate/revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the*

> *reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/Tribunal/Authority for reaching to such conclusion. (See State of Maharashtra vs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129, Jawahar Lal Singh vs. Naresh Singh & Ors., (1987) 2 SCC 222, State of U.P. vs. Battan & Ors., (2001) 10 SCC 607, Raj Kishore Jha vs. State of Bihar & Ors., (2003) 11 SCC 519 and State of Orissa vs. Dhaniram Luhar, (2004) 5 SCC 568)."*

> *14. In view of the aforesaid settled legal position, by no stretch of imagination, it can be said that the impugned order passed by respondent no. l would satisfy any of the criteria prescribed in the aforesaid decisions as the impugned order on face of it, is not a speaking and reasoned order and therefore, without going into the merits of the case, the impugned order dated 23.12.2020 passed by respondent no.1 is required to quashed and set aside by remanding the matter back to respondent no.1 to pass a reasoned speaking order keeping in mind the aforesaid legal position."*

13. On perusal of the impugned order, it also appears that the respondent no.2 has reproduced the show cause notice, submissions of the petitioner and straightaway given findings without dealing with any of the submissions of the petitioner and rejected the same in one line without giving any reason as to why such submissions are rejected.

14. In view of the above fact situation, the interest of justice would be served for all the concerned if the petition is disposed of by giving following directions.

(1) The impugned order dated 27th November, 2020 is hereby

quashed and set aside and matter is remanded back to the respondent no.2 to decide afresh *denovo*.

(2) The respondent no.2 shall consider the written submissions made by the petitioner within a period of four weeks from the date of receipt of this order and thereafter, considering such submissions in detail along with the documents, which are relied upon by the petitioner, arrive at a conclusion without being influenced by the earlier order dated 27th November, 2020 in accordance with law.

15. It is clarified that this Court has not gone into the merits of the matter.

16. The respondent no.2 is directed to pass afresh *denovo* order in accordance with law within a period of three months from the date of receipt of this order. Petition is accordingly partly allowed. ***Rule is made absolute to the aforesaid extent***. No order as to costs.

17. Registry is directed to provide a copy of writ of this order to all the concerned through e-mail. ***Direct service is permitted***.

18. In view of the aforesaid order passed in Special Civil Application no, order is required to be passed in the Civil Application and is accordingly disposed of.

(BHARGAV D. KARIA, J.)

AMAR RATHOD...