

Debashish Sarkhel S/o Late Sudhakar Sarkhel, R/o Sarkheldih,
Jamtara, PO PS & District Jamtara.

-versus-

- ... Respondents

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4. A proceeding was initiated under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act against the petitioner. Final order was passed on 30.03.2022 by the Senior Divisional Engineer (2), Eastern Railway, Asansol. The order reads as follows: -

Asansol. dated:30.03.2022

REASON

-: 2 :-

Whereas I, the undersigned, am satisfied that you failed to utilize the opportunity you were given to appear before the undersigned within a period as specified in previous notice dated 24.02.2022 to show cause.

OR

Whereas I am satisfied that the statement/examination submitted vide your representation dt NIL is not satisfactory and convincing.

Now, therefore in exercise of the power conferred upon me under sub-section (1) of section 5 of the public premises (Eviction of unauthorized occupants) Act, 1971 I hereby order the said I India, and all other person who may be in occupation of the said premises or art thereof to vacate the said premises by 28.04.2022 in the event of refusal of failure to comply with this order within the period specified above the said I India, and other person concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

I India

At + PO Jamtara

Jharkhand 815351

**SIGNATURE AND SEAL OF THE
ESTATE OFFICER**

*Sr. Divisional Engineer (2)
Eastern Railway, Asansol*

5. From the aforesaid order, it is quite clear that the same lacks application of mind. No reasons have been assigned on any of the issues nor any issues have been framed. How the petitioner is unauthorized occupant, how his reply was unsatisfactory and why the same was not accepted have also not been mentioned in the order. Reasons are indispensable components and in absence of any reasons while coming to conclusion, an order against any party cannot be sustained.

6. The Hon'ble Supreme Court, in the case of ***Kranti Associates (P) Ltd. versus Masood Ahmed Khan*** reported in **(2010) 9 SCC 496**, at paragraph 47 thereof, has summarized the necessity as to why judicial, quasi judicial or even administrative orders needs to be reasoned one. Paragraph 47 of the said judgment reads as under: -

"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 [(1987) 100 Harvard Law Review 731-37].)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], 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".

7. The only ground, which the learned counsel for the respondents has urged is that the order is appealable. However, I am not inclined to relegate the petitioner to the Appellate Authority, inasmuch as considering the nature of the order impugned, the Appellate Authority will also but naturally pass an order relegating the matter to the Estate Officer to proceed afresh in accordance with law. Relegating to the Appellate Authority will be a futile exercise.

8. Thus, since no reason has been mentioned in the impugned order and the same is cryptic, I am inclined to allow this writ petition by setting aside the impugned order with a liberty to the Estate Officer to initiate fresh proceeding and pass appropriate order after affording opportunity to the petitioner of being heard. The petitioner should appear before the Estate Officer by 31st January, 2024 along with a copy of this order, failing which, the proceeding before the Estate Officer will proceed ex parte. Further, on appearance of the petitioner on or before 31st January, 2024, the Estate Officer shall fix a date when he will commence the proceeding. He is expected to decide the entire proceeding in accordance with law as expeditiously as possible. Further, after appearance of this petitioner before the Estate Officer on or before 31st January, 2024, the Estate Officer will hand over the details of the properties, which according to the Estate Officer has been unauthorisedly

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occupied by the petitioner. He will also give details of the person(s) who has unauthorisedly occupied and grounds for prima facie coming to the conclusion that the petitioner is an unauthorized occupant. Only after supplying all the aforesaid details, the Estate Officer shall proceed with the Eviction Proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act.

9. This writ petition is, accordingly, allowed with the aforesaid observations and directions. Pending interlocutory applications, if any, stand disposed of.

(Ananda Sen, J.)