



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 5081 of 2017

Digambar S/o Awadhoot Rodekar and others

Versus

Deputy Collector, Yavatmal and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Mahesh Rai, Advocate for the petitioners.
Shri B.M.Lonare, AGP for the respondent/State.
Shri Jaykumar S. Wankhede, Advocate for the
respondent no.6.

CORAM : ANIL S. KILOR, J.

DATED : 1st FEBRUARY, 2024.

Heard.

2. The order dated 25th January, 2017 passed by the Deputy Collector, Yavatmal and the order dated 13th July, 2016 passed by the Sub Divisional Officer, Umerkhed, upholding the order of the Tehsildar / Mamlatdar, Mahagaon allowing the application moved by the respondents for removal of obstruction alleged to have created by the petitioners, is under challenge in this writ petition.

3. On the face of the impugned order passed by the Sub Divisional Officer, it is evident that not a single reason he has recorded for upholding the order of the Tehsildar. It is a settled principle of law that the

reasons are soul of the order and it is right of the parties to know the reason for granting or denying the relief. The Hon'ble Supreme Court of India in the case of *Kranti Associates (P) Ltd. ..vs.. Masood Ahmed Khan*, reported in **(2010) 9 SCC 496** has held thus :

“47. Summarizing 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 life blood 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 vs. University of Oxford, wherein the Court referred to Article 6 of 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."

4. In absence of any reasons recorded by the Sub Divisional Officer, Umerkhed justifying the ultimate conclusion to uphold the order of the Tehsildar, the impugned order does not stand for scrutiny. In the circumstances, I am of the opinion that the only option left to this Court to remand the matter back to the Sub Divisional Officer, Umerkhed to decide the revision afresh. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. The order dated 25th January, 2017 passed by the Deputy Collector, Yavatmal and the order dated 13th July, 2016 passed by the Sub Divisional Officer, Umerkhed are hereby quashed and set aside and the matter is remanded back to the Sub Divisional Officer, Umerkhed to decide the same afresh after hearing both the parties;
- iii. The Sub Divisional Officer, Umerkhed shall decide the revision within a period of three months from the date of appearance of the parties;
- iv. The parties shall appear before the Sub Divisional Officer, Umerkhed on **21st February, 2024** at 11 a.m.

[ANIL S. KILOR, J.]