Bodies performing quasi judicial function law constitutional administrative essay...

Law

REASONEDORDERS

INTRODUCTION

Giving of reasons in support of an order has been considered to be the third pillar of natural justice, by virtue of which, a party has a right to know not only the result of the inquiry but also the reasons in support of the decision.[1]The condition to record reasons introduces clarity and excludes arbitrariness and satisfies the party concerned against whom the order is passed.[2]Reasons are the links between the materials on which certain conclusions are based and the actual conclusions.[3]Mere mechanical or rubber stamp and uniform reasons given would not satisfy the requirement.[4]The reasons must show that the authority has applied its mind to the case[5]and must be given in such a manner that the appellate court may be in a position to canvass the correctness of the reasons given by it.[6]They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.[7]A law which allows any administrative authority to take a decision affecting the rights of the people without assigning any reason cannot be accepted as laying down a procedure which is fair, just and reasonable and hence would be violative of Articles 14 and 21.[8]Even where there is no statutory requirement imposing an obligation to provide reasons, it is necessary as it is the only visible safeguard against possible injustice and arbitrariness and affords protection to the person adversely affected.[9]Chandrachud, J. held that the power to refuse to disclose reasons in support of the order is exceptional in nature and ought to be exercised fairly, sparingly and only when fully justified by the

exegencies of an uncommon situation.[10]A reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the tribunal itself. A statement of reasons is thus one of the essentials of justice.[11]

COMPARATIVE RELEVANCE

SITUATION IN ENGLANDThere is no general rule of English law that reasons must be given for administrative or even judicial decisions.[12]The principles of natural justice, also, do not, as of yet, include any such general rule[13]and the duty to give such reasons were disproved by the Courts of Appeal.[14]In fact, it was held by the House of Lords that it was the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.[15]The Franks Committee then insisted that there should be a general practice for adjudicatory bodies to give reasons for their decisions.[16]The same was incorporated in Section 12(1) of the Tribunals and Inquiries Act, 1958 which imposes a duty to give reasons only where the party requests for them on or before the giving or notification of the decision. However, outside the purview of this Act, the Courts have declined to hold that decisions supported by reasons are a requirement of natural justice inspite of the fact that the Committee on Ministers Powers made a strong plea to extend the principles of natural justice to include reasoned decisions. No other 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 decisions.[17]However, due to the perceptible trend towards an insistence on greater openness and transparency in the making of

administrative decisions, it was held to be unfair to not give reasons where, in the context of the case, it must be given.[18]The first major change was seen by the observations made by Lord Denning who vehemently stated that the giving of reasons is one of the fundamentals of good administration.[19]SITUATION IN INDIADuty to assign reasons even in the absence of any statutory provision as a requirement of the principles of natural justice is a judge-made law. Though many argue that such a stance must be left to the decision of the legislature, it has been the view of the courts that the providing of reasons is implicit in every administrative action having civil consequences as a requirement of the principles of natural justice. In conclusion, good administration implies reasons where a person legitimately expects to be treated fairly.[20]In India, it was not until very recently that it was accepted that reasoned orders form a part of natural justice. The Supreme Court, in the case of Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India[21], held that the rule requiring reasons to be recorded by quasi-judicial authorities in support of the orders passed by them must be held to be a basic principle of natural justice. Bhagwati, J. held that this rule had to be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.[22]Subsequent to this, the same rule was upheld in the case of Maneka Gandhi v. Union of India[23]where the court held that the order impounding the passport of the petitioner was clearly in violation of the rule of natural justice embodied in the maxim audi alteram partem. Though the same argument was not accepted by the Supreme Court in the case of Union of India v. E. G. Nambudiri[24], a Constitution bench of the Court held that the requirement to record reasons

can be regarded as one of the principles of natural justice which govern the exercise of power by administrative authorities.[25]SITUATION IN USAThe administrative authorities in the US are governed by the Administrative Procedure Act 1946. This Act requires administrative agencies to give reasons for their decisions.[26]This right arises out of the due process clause laid out in the Constitution which hold that a decision unaccompanied by reason may not be considered a due decision.[27]

NEED FOR REASONED ORDERS

The need for reasons being provided along with decisions has sharply been exposed by the expanding law of judicial review since that are many decisions that are liable to be quashed or appealed against on grounds of improper use, irrelevant considerations and errors of law of various kinds. A right to reasons is therefore an indispensable part of a sound system of judicial review.[28]In the absence of reasons, the person affected may be unable to judge whether there has been a justifiable flaw in the decision making process[29]and thus whether an appeal, if available, should be instituted or an application for judicial review made.[30]It was Lord Mustill who said that in order to mount an effective attack on the decision, the affected person has, in the absence of reasons, virtually no means of ascertaining whether the decision making process has gone astray.[31]When leave for judicial review is granted, the decision maker has a duty of candour to the Court and must reveal why the challenged decision was made.[32]If the duty to give reasons is an element of natural justice, the failure to give reasons, like any other breach of natural justice, should render the disputed decision void. A void decision cannot be subsequently validated by late

reasons even if the decision was justified.[33]The Court cannot exercise their duty of review unless they are advised of the considerations underlying the action under review.[34]The implied requirement of reasons is the foundation of which the whole scheme of judicial review under the Indian Constitution is based. The decisions of administrative agencies unaccompanied by reasons will have the effect of whittling down the efficacy of constitutional provisions such as Articles 32, 136, 226 and 227.[35]

APPLIANCE OF REASONED DECISIONS

Mode of Giving Reasons

Reasons need not be always in writing and supplied to the parties immediately. The Courts have not prescribed any particular form or scale of reasons.[36]The reasons can also be orally pronounced in the presence of the parties, or it may be merely recorded. However, the validity of an administrative action must be judged by the reasons recorded therein and not in the light of subsequent explanation or affidavit.[37]Therefore, it is not permissible for the authority to support the order by reasons not contained in the record.

Bodies Performing Quasi-Judicial Functions

The Court observed that if courts of law are to be replaced by administrative authorities and tribunals, as indeed in some cases, with the proliferation of administrative laws, they may have to be replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their order and give sufficiently clear and explicit reasons in support of the orders made by them.

Only then, administrative bodies and agencies performing quasi-judicial functions would be able to justify their existence and carry credibility with the people by inspiring confidence in the administrative adjudicatory process.[38]Therefore, while exercising quasi judicial power, an order must be supplied with reasons as it firstly, gives the aggrieved person an opportunity to demonstrate that the reasons are erroneous and secondly, it operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.[39]Since conclusions in quasi-judicial actions must be based on reasons, the Supreme Court stated that requirement of recording reasons is " too obvious to be reiterated and needs no emphasizing".[40]Recognizing the efficacy of reasons in any administrative adjudicatory process, courts have held that that if the statute does not provide for appeal or revision, administrative authorities must give reasons if they are exercising quasi-judicial functions.[41]On the other hand, the Supreme Court has held that even when a quasi-judicial order is subject to appeal, the law necessarily implies the requirement of reasons otherwise the right to appeal shall become an empty formality.[42]In conclusion, it can be stated that, unless expressly or by necessary implication held to the contrary, an administrative authority exercising judicial or quasi judicial functions must record reasons in support of their decisions as such decisions are subject to the appellate jurisdiction of the Supreme Court under Article 136 as well as the supervisory jurisdiction under Article 227. It introduces clarity in the decisions and minimises the chances of arbitrariness and ensures fairness in the decision making process.[43]

Bodies Performing Administrative Functions

In the case of Kishan Chand Arora v. Commr. Of Police[44], the Supreme Court held that in case an administrative authority was performing administrative functions and not quasi-judicial functions, then he was not obliged to give reasons for orders passed by him with respect to those administrative orders. The Courts did not go so far as to hold that the requirement of reasons is also implied when the authority is exercising administrative functions.[45]In the recommendations of the 1959 Delhi Congress of the International Commission of Jurists, it was observed that the Rule of Law will be furthered if the Executive is required to formulate its reasons when reaching any decision, be it judicial or administrative in character, and when it affects the rights of individuals and when a concerned party makes a request to communicate such reasons to them.[46]Even in respect of Administrative orders, Lord Denning has held that reasoned decisions have to be given. In more recent times, however, the distinction between administrative and quasi-judicial functions has become blurred[47]and therefore the proposition laid out in the Arora case rejecting the need of reasons for orders that are administrative in nature cannot be accepted. The Supreme Court held that even executive authorities, when taking administrative action, which involves any deprivation of or restriction on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.[48]The

duty to provide reasons can be of profound significance to the public administration in terms of the promotion of accountability, fairness, justice and the improvement-of the quality of decision-making.[49]Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.[50]Therefore, 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.[51]The Courts have 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'.[52]

Matters in Appeal

If the decision of the authority of first instance is wholly or partially reversed in appeal or revision, the authority must give reasons for such reversal.[53]On the other hand, a decision confirming the decision in appeal need not give reasons.[54]The Court has held that it would be laying down the proposition a little too broadly to say that even an order of concurrence must be supported by reasons.[55]Therefore, the need for recording reasons is greater in a case where the order is passed at the original stage and the appellate or revisional authority, if it affirms such an order need not give separate reasons.[56]However, in more recent times, the matter has been viewed differently. The Supreme Court has held that no doubt an appellate or revisional authority is not required to give detailed reasons for agreeing or confirming the order of the lower forum, but in the interest of justice, some brief reasons should be indicated even in order affirming the views of a lower

forum.[57]The same has been affirmed in the Siemens[58]and Travancore Rayons[59]cases wherein the Supreme Court insisted upon the furnishing of reasons when an appellate body passes an order, even if it affirms such an order. This has been a long established practice since 1971 and hence the observations made in S N Mukherjee need only be considered as obiter dicta.[60]In conclusion, it can be reasoned that any power of revision is exercised in a quasi judicial capacity. The duty to give reason is an incident of the judicial process and in discharging quasi-judicial functions, the appellate authority must act in accordance with natural justice and give reasons for its decision.[61]Therefore, if in case the Supreme Court exercises its jurisdiction under Article 136 of the Constitution, it would find it difficult to ascertain on what grounds such an order was upheld by the revision authority.[62]

CONCLUSION

Giving reasons for decisions should be treated as a central facet of procedural fairness in administrative law. Practically, it lets the individual know whether it is worth appealing or to seek judicial review, and it also breeds the relationship between the citizen and the State according to which the latter must treat the former with respect. It is important to nurture such a relationship since it not only recognizes the dignity of the individual, but also brings about trust between citizens and public authorities that, in turn, acts as a springboard for co-operation between them.[63]Judicial review has been made a part of the basic structure of the Constitution.[64]If the courts were totally deprived of that power, the fundamental rights conferred on the people will become a mere adornment because rights without remedies are as writ in water.[65]The Supreme Court feels that the judicial review over

adjudicatory bodies would be very much weakened if such bodies do not give reasons for their decisions.[66]Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny.[67]It is thus well established law that as far as matters of adjudication are concerned, reasoned orders are compulsory and imperative in the administration of the government and its various bodies. Today, the old ‘ police state’ has become a welfare state. The government functions have increased and as a result, the number of administrative tribunals and executive authorities have increased. As a result, the number of discretionary powers vested in them have increased, which further widens the possibilities of abuse of power by them. The question then posed is whether or not a duty is cast upon those bodies performing purely administrative functions to pass reasoned orders. There was consensus before on the proposition that the doctrine of natural justice was applicable only to judicial and quasi-judicial proceedings and not to purely administrative proceedings.[68]It had been argued that providing reasons can stifle the exercise of discretion and overburden the administration, especially affecting administrative authorities who execute administrative actions.[69]However, Subbarao, J. observed that since an executive officer observes things from the stand point of policy and expediency and as such cannot change from time to time and act to act. Therefore, restrictions need to be placed on them and the least they should do is give reasons for their orders.[70]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.[71]In India, it is thus settled that any public authority must act fairly, justly, reasonably and impartially, even in the absence of any statutory requirement to that effect.[72]For development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of " Due Process".[73]" Due process" of law has been recognized in India as the only procedure under which the fundamental rights of person can be restricted under Article 21 of the Constitution. [74]Again, this has only been recognized with respect to the fundamental rights of person. Therefore, the providing of reasons for orders that are administrative in nature will be necessitated only in case the fundamental rights of a person are being hampered. In conclusion, the time has now surely come for the court to acknowledge that there is a general rule that reasons should be given for decisions, based on the principle of fairness which permeates administrative law.[75]In order to uphold the Rule of Law, it is necessary that in all administrative and quasi-judicial actions, the requirement of a ‘ reasoned decision’ must be implied unless expressly excluded.[76]