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Natural Justice and Reasoned Decisions

By

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Natural Justice is not the best possible justice ' all that it requires is a form of justice which is reasonably fair in the circumstances'. Till 1964 the English development in this sphere had created a confusion that these well recognised principles of a fair and unbiased hearing were only to be followed in quasi-judicial and judicial proceedings. But Ridge V. Baldwin[1] removed the privailing confusion. In this case the failure of the watch committee in giving a hearing to the dismissed police constable rendered the decision without jurisdiction and void. Commenting upon the instant case Professor S.A.DeSmith said "From now on label-consciousness and word-worship may be less conspicous features of administrative law in courts".[2] Some later English decisions viz., R.V. criminal injuries compensation board.[3] In re H.K. (an infant)[4] and Wiseman v. Boreman[5] have totally obliterated the distinction between administrative and quasi-judicial functions. Lord Hewart's gloss on the Lord Atkin's remark in R.V. Electricity Commissioner[6] of a 'Super-added obligation to Act Judicially' has faded considerably. In a recent India decision State of Assam v. Bharat Kala Bhandar[7] without attempting to

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1. (1964) A.C.40.
2. 26 M.L.R.343-344 (1963).
3. (1967) 2 Q.B.864.
4. (1967) 2 Q.B. 617.
5. (1969) 3 W.L.R.706.
6. (1924) I. K.B. 171.
7. A.I.R.(1967) S.C.1968.

classify the functions as quasi-judicial the Court insisted on an appropriate hearing. In Binapani Dei's case Shah J. as he than was, without referring to Baldwin case affirmed a wider proposition under Art. 311 of the constitution to be more liberal towards civil servants, and observed that " it is true that the order is administrative in character, but even an administrative act which involves evil consequences as already stated, must be made consistently with the rules of natural justice...."8. And than finally in Kraipak V. Union of India 9 Mr.Justice Hegde beautifully summed up the position:-

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that if included justice two rules, namely (i) no one shall be a judge in his own cause (Nemo debet 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 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. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules would be made inapplicable to administrative enquiries. Often times it is not easy to draw the line

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8. State of Orissa Vs. Dr.(Miss) Binapani Dei A.I.R. 1967 S.C.1269.

9. A.I.R.1970 S.C.150, 156.

that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this court in Suresh Kishy George v. University Kerala, CIVIL APPEAL No.990 of 1968 D/-15-7-1968 (A.I.R.1969 S.C.198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

REASONED DECISIONS

Apart from the two main principles of a fair and unbiased hearing, it is visible from the modern trends that a third principle "Reasoned decision" is gaining ground. In England as back as Donoughmore Committee 10 giving its recommendations regarding Judicial and quasi-judicial decision referred to the need of 'reasoned decision' by quasi-judicial and judicial tribunals. Much later Tribunals and Inquiries Act 1958 implementing the recommendations of the report of Franks Committee on Administrative Tribunals and Inquiries 11 made it obligatory for the Tribunals to furnish, on request, reasons for decision butthe same

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10. Commd. 4060 (1932.)

11. Comm.d.218 (1957).

may be refused only "on grounds of national security" or when the person who desires to have the reasons is not" primarily concerned with the decision..." and such statement shall form part of the decision and the record. In U.S.A. Section 8(b) of administrative procedure Act, 1946 , makes it obligatory for every adjudicatory body to include in its decision a statement of "findings and conclusions as well as the reasons or basis thereof upon all the material issues of fact, law or discretion presented on the record". Thus the tribunal to whom this Act applied are placed under an obligation to deliver opinions very much similar to the judgements given by courts. Even outside the scope of the statute, it has been held that one who decides must give reasons for his decision[12]. In India, there being no composite status of the nature of the aforesaid Acts, the matter is governed by the relevant statutes governing each case individually or by judicial precedents'.

In India while on one end Delhi High Court in Jagannath V. Union said that: "It will not be very far-fetched to say that the right of the party to know the reasons, for the decision, be it judicial or quasi-judicial, is one of the principles of natural justice"[13]; on the other end the pendulum oscillates into other direction in Somdatt's case that"[14] ... We are unable to accept the contention... that there is any general principle or rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision".[15] Court observed that no express obligation is imposed be Section 164 and 165 of the Army Act on confirming authority or upon the central government to give reasons in support of its decision to confirm the proceedings of the court martial.

Somdatt's case seems to be a solitary example of its kind where court martial proceedings are treated as a class in itself. The previous decisions in the

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12. Federal Communications Commission V. Pattsville Broadcasting Co., (1940) 309 U.S.134. 4

13. A.I.R.1967 Delhi 121.

14. Somdatt Datta v. Union of India, A.I.R.1969 S.C.414.

15. Ibid, p.421, per Justice Ramaswamy.

cases viz. Hari Nagar Sugar Mills Ltd. V. Sham Sunder[16] Sardar Govind Rao v. State of M.P.[17] and many more were not referred by the court. In Harinagar Sugar Mills Case the Deputy Secretary in the exercise of the powers under Section 111 of the companies Act 1956 set aside without reasons the decision of the board of directors refusing to register the transfer of certain shares. The Supreme Court directed the company to register the shares. The court based its decision on the ground that without knowing the reason for the decision under appeal the court could not exercise the appellate jurisdiction. Mr.Justice Shah observed, "The mere fact that the proceedings are to be treated as confidential does not dispense with a judicial approach nor does it obviate the disclosure of sufficient grounds, and evidence in support of the order."[18]

Gujarat High Court also quashed the order of the magistrate which cancelled firearm licence of the petitioner without giving reasons. The need of recording the reasons was stressed. If the authority considered disclosure of such reasons prejudicial to public interest, they have got to be communicated to the appellate authority on demand in case the person affected has preferred an appeal against the order.[19] Thus in exercise of powers of appeal the obligation to give reasons has been particularly implied.

In Sardar Govind Rao V. State of M.P.[20] Supreme Court went a step further by holding that the applicant

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16. A.I.R.1961 S.C.1669.

17. A.I.R.1965 S.C.1222.

18. A.I.R.1961 S.C. 1669 at p.1669.

19. Rati Lal Bhogilal Shah V, State of Gujarat A.I.R.1966 Guj.p.244.

20. A.I.R.1965 S.C.1222.

who had applied for the award of a grant of money or pension to the state government was himself entitled to know the reasons for rejection of his application by the state government. The requirement of giving reasons now does not rest specifically on the statutory requirement but it is a requirement of justice. The new vista opened by the Supreme Court in the above mentioned decisions was soon challenged before itself in M.P.Industries v. Union of India [21] where the appellant a mining concern filed an appeals with special leave to the Supreme Court under Art.136 of the constitution against the central government rejecting under rule 55 of mineral concession rules (1960) the revision of the appellant filed under rule 54 of the said rules. In revision central government agreeing with the order of the state government affirmed it. The Supreme Court distinguished the decision in Harinar Sugar Mills case [22] on the ground that central government there had reversed the decision of Directors of the company without giving any reasons. They differentiated between "the order of reversal by the appellate authority in that case for no reason whatsoever and the order of affirmance by the revising authority in the present case." On the other hand Mr.Justice Subha Rao was of the view that central government order was vitiated, as it did not disclose any reasons for rejecting the revision application of the appellant. Justice Subha Rao's view further gained support from the judgement [23] in Bhagat Raja V. Union of India. In this case which dealt with the same rule 55 of mineral concession Rules, the central government rejected the revision application. On appeal by special leave the Supreme Court speaking through Mr.Justice Mitter held that if no reasons were given the High Court and Supreme Court would be placed under great disadvantage in exercising the supervisory powers under Acts 227 and 136 respectively. If the state government gives sufficient reasons, the central government may adopt them and the court may see whether these reasons are good. But when the

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21. A.I.R.1966 S.C.671.

22. A.I.R. S.C.1669.

23. A.I.R.1967 S.C.1606.

reasons given by the state government are scrappy or bebulous and central government makes no attempt to clarify the same, the Supreme Court may proceed to examine the case 'de novo'. The absence of any requirement in the relevant statutory provision was immaterial and even when the quasi-judicial tribunal was confirming the order of an inferior authority it was bound to give some reasons though tot a judgement like a court of law.

In a recent decision Travancore Rayons V. Union of India [24] the appellant company having not been satisfied by the detailed and elaborate decision of the collector customs, invoked the revisional jurisdiction of the central government under Section 36 of the central excises and Salts Act 1944. Communicating its decision on a printed proforma the central government rejected the revision application. No reasons were given. The appellant company filed a special leave appeal under Art.136 of the constitution. The court accepted the appeal and remanded the case to the central government to be disposed of according to law. Mr.Justice Shah as he then was giving the opinion of the court observed "Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved and the mental process by which the conclusion is reached in cases where a non-judicial function is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions this court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expendiency. The court insists upon disclusure of reasons in support of the order on two grounds. One that the party aggrieved in a proceeding before the High Court or this court has the

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24. A.I.R.1971 S.C.862.

opportunity to demonstrate that the reasons which persuaded the authority to reject his case where erroneous; the other that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power".[25] The court clearly laid dosn an obligation on quasi-judicial authorities to give reasons.

CONCLUSION

After examining the aforesaid authorities it seems that time and again when courts found an opportunity they have tried to follow the principle that justice should not only be done but should appear to be done. An unspeaking decision may be arbitrary and based on "on personal feelings or even whoms, caprise or prejudice. If the tribunals are to command the confidence of the public they must give reasons".[26] And as "this is not the task of Parliament.... The courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to totalitarian state."[27]

The position so far established is a welcome development in this direction. There ought to be certain inherent safeguards in judicial procedure. The Supreme Court and High Court in exercise of their powers under Acts 136 and 227 respectively have given new direction and opened new vista of Judicial review in India. Rightly has been said by Professor H.W.R.Wade that "it seems strange that the principles of natural justice have never been extended to over this necessary part of the judicial function".[28]

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25. Ibid.865.
26. Sir Alfred Denning: Freedom under the law (eighth Impression 1968) p.92.
27. Ibid p.126.
28. -79 L.Q.R.(1963) p.344 at p.346.

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