LAW OF SPEAKING ORDERS. By A.S. Misra. Eastern Book Company, Calcutta. 1978. Pp. xx+179. Rs. 25.

THIS IS the second edition of a very useful book. It is useful to legal practitioners as it contains brief discussions of a number of judicial decisions with quotable quotes. It is perhaps more enlightening to the lay reader who should know what law or lack of it governs his every day life. It is clear that when a non-speaking order is handed down, the party adversely affected by it does not know and has no means to know why such a decision has been made. One or more shrewd guesses he may be able to make; but they remain guesses bereft of certitude. If we are to be under a government of laws and not of men, non-speaking orders have to be banished from all fields of life where decisions of a judicial nature are to be given.

There is the maxim 'ignorance of law is no excuse'. Along with this there is the *dictum* of no less a person than Manu to the effect that he knoweth not law who knoweth not the reason for it. To these may be tagged a recent opinion. Willlam Coleman, a former Secretary of Transportation in the United States, stated: "A decision that 'cannot be explained' is very likely to be an arbitrary decision".[1] This statement certainly does reflect the colourless spectrum of unreasoned judgments.

> The author gives his primary reason for writing the book. He says: Some judges are prone to making non-speaking orders in which the reasons for the rejection of important applications are neither incorporated in the text of the order nor are those reasons made known to the parties orally. Not unoften appellate courts also decide cases by passing non-speaking orders. Even the Hon'ble Supreme Court is no exception. This leaves the affected suitor dissatisfied and he feels that the merits of his case have not been adequately considered.[2]

He believes that man's desire to know the reasons for an adverse judicial or quasi-judicial order, especially one that injures his interests, is legitimate and deserves to be satisfied. The book is a strong, persuasive plea for passing speaking orders by judicial officers as well as by administrative officers when the latter deal with quasi-judicial matters.

Misra quotes extensively from the opinion of Subba Rao, J., (as he then was) in *M.P. Industries* v. *Union of India*[3] to stress the point that

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1, U S. Dept. of Transportation, *The Secretary's Decision on Concorde Supersonic Transport* 7(1976)

2. A.S. Misra, *Law of Speaking Orders* 2(1978) (hereinafter referred to as Misra)

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

administrative tribunals should give reasons for their orders. Subba Rao, J., stated :

> Even in the case of appellate Courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional Court agrees with the reasoned judgment of the subordinate Court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal for as often as not the order of the first tribunal is laconic and does not give any reasons.[4]

If nothing is said by way of opinion, how is the party concerned to know whether the dismissal is because the appellate or revisional court agreed with the reasons given by the subordinate court or because there were no legally permissible grounds to interfere with the impugned decision.

The lack of grounds and the agreement with the reasons given need not coalesce, though the result—the dismissal—may have the same effect on the parties. Keats has said:

Heard melodies are sweet, but those unheard are sweeter....

One wonders how many litigants would incline to endorse Keats's view when applied to unexpressed, and, therefore, unheard, judicial melodies, that is when they are "ditties of no tone". Perhaps the *raison d'etre* of poetic fancy is usually different from the rationale of a legal postulate. But, if reasons are not stated, how are we to know?

A special reference is made by the author to the Supreme Court's practice of refusing to grant special leave to appeal without assigning reasons. The author says that the court's practice is to make a non-speaking order while rejecting special leave petitions. He proceeds to state:

> [T]his practice, though of long standing, does not seem to be on all fours with the principles of judicial propriety of which high standards have been set and sustained by the Supreme Court itself and endorsed by jurists. Its reconsideration would appear to be called for....[5]

And he lists a number of grounds. One of them which appears to be specially telling is concerned with the reviewability of rejection of special leave appeals. In common with all decisions of the Supreme Court an order of rejection made under article 136(1) of the Constitution is reviewable under article137 and under the inherent powers of the court. In the absence of a speaking order, the author points out, the court's review jurisdiction cannot be effectively exercised to serve the ends of justice.[6]

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4. *Id.* at 675, quoted in Misra, *supra* note 2 at 64.
5. *Id.* at 115.
6. *Id.* at 119.

Chapters 9 and 10 which are additions in the second edition, deal with administrative authorities acting quasi judicially and their obligations while so acting. After having explained the general principles which should govern their acts in this regard and having referred to several judicial decisions, the author quotes from a directive of the Government of Uttar Pradesh in relation to speaking orders in disciplinary proceedings. The directive states:

> [W]hile passing orders in disciplinary proceedings every punishing authority should briefly state in the order of punishment the charges against the person being proceeded against and the reasons for holding the charges proved and inflicting the punishment.

While appreciating the government's sense of fairness in issuing the directive, one cannot help feeling unhappy about the attitude of the administrative authorities which necessitated giving such salutary directions.

The author's recommendation about speaking orders is welcome, though to a sceptic familiar with the pervasive sense of injustice among the bureaucracy in India it may appear not a little utopian. He says:

> A country-wide convention should be brought into being to the end that those in whom judicial or quasi-judicial power is vested shall give reasons when exercising a legal power or discretionary power if such exercise adversely affects any party before them. The sanction behind this convention will be the sense of justice and fair play of the judges and administrative authorities.[8]

Some of the appendices of the book have the appearance of gilding the lily. One seldom finds such appendices in a practitioner's book. Appendix 1 which gives 'explanation' of some words and phrases and appendix 3 which supplies a list of abbreviations may prove useful to the lay reader. A few of them, for instance, the one about "the peculiar convention" regarding v. or vs. may not be all that familiar to most Indian lawyers, as this English convention is "not always followed in India".[9]

There is a heartening note, towards the end of chapter 8—heartening not only to the author but all those who indulge in legal writing with a view to the reform of law. The author says:

> Since the publication of the first edition of this book in 1968 there is a noticeable tendency on the part of the Supreme Court to indicate the reasons for its order adverse to the moving party in... various classes of cases.[10]

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7. Quoted in *id.* at 143.
8. *Id.* at 146.
9. Misra, *supra* note 2 at 162.
10. *Id.* at 133.

The reviewer unfortunately has not observed any change, not to any appreciable extent, anyway.

One assumes that the reference to the publication of the first edition is not merely indicative of chronology, but is causal in character. Following the trend in the Supreme Court, the High Courts also, according to the author, are now disposed to record reasons in cases where they used to make non-speaking orders.[11] Misra, however, laments, though hopefully, that this tendency has not assumed the character of a practice either in the Supreme Court or in the High Courts. Further, it may not be easy to persuade administrative authorities to recognise the need for adoption of the principles underlying the making of speaking orders. They may however, follow the lead given by the superior courts, in those decisions which they do not claim to be purely administrative in character.

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11. Misra, *supra* note 2 at 124.

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