ADMINISTRATIVE DECISIONS AND DUTY TO GIVE REASONS A SEARCH FOR JUSTIFICATION

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THE PREGNANT problem of power and its responsible exercise is one of the perennial riddles of many a constitutional order. The Indian Constitution provides adequate remedial safeguards against arbitrary and capricious state action.[1] In a welfare state like ours with a growing emphasis on administrative control which could interfere with the life, liberty and rights of citizens it has to be ensured that those who are invested with wide and varied powers act according to justice and fairness.[2] It is well settled that state action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. "[I]rrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the State or the Legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly."[3]

A recording of reasons in support of its decisions by administrative authorities excludes or at any rate minimizes arbitrariness. The Madras High Court in *A. Vedachalal Mudaliar* v. *State of Madras*[4] observed : "From the standpoint of fair name of the tribunals and also in the interests of the public, they should be expected to give reasons when they set aside an order of an inferior tribunal .. .Further if reasons for an order are given, there will be less scope for arbitrary or partial exercise of powers and the order 'ex-facie' will indicate whether extraneous circumstances were taken into consideration by the tribunal in passing the order."[5] This case clearly illustrates the point that quasi-judicial bodies are under an obligation to pass speaking orders. In a welfare state rights of the citizens are

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1. Arts. 32, 136, 226 and 227.

2. See *Kasturi Lal Lakshmi Reddy* v. *State of Jammu and Kashmir*, (1980) 4 S.C C.1. In *Union of India* v. *Anglo Afghan Agencies*, A.I.R. 1968 S.C. 718, the Supreme Court observed that the executive must pass orders in consonance with the basic concepts of justice and fairness

3. *Swadeshi Cotton Mills* v. *Union of India*, A.I R. 1981 S.C. 818 at 828. In *Blaze Central (P.) Ltd* v. *Union of India*, A.I.R. 1980 Kant. 186, the High Court of Karnataka observed that the duty to act fairly does not only mean "the obligation to observe the principles of natural justice, but, on the contrary, to observe a higher standard of behaviour than that required by natural justice." *Id.* at 192.

4. A.I.R. 1952 Mad. 276 See also *M. Ramayya* v. *State of Andhra*, A.I.R. 1956 A.P. 217; *A. Annamalai* v. *State af Andhra*, A.I R. 1957 A.P. 739.

5. *Id.* at 280.

affected by administrative decisions, in particular, by the exercise of discretionary power.

In England and United States a statutory obligation is cast on administrative agencies to make a reasoned order. Section 12 of the Tribunals and Inquiries Act 1958 requires the statement of reasons for a decision. The US counterpart is section 8(b) of the Federal Administrative Procedure Act 1946 which requires that all decisions shall include a statement of findings and conclusions, and the reasons or basis therefor. In India we do not have any corresponding general statutory obligation to record reasons for decisions by adminstrative authorities. But the judiciary has imposed an obligation on quasi-judicial authorities to record reasons. With the abandonment of the distinction between quasi-judicial and administrative functions for the enforceability of the principles of natural justice it is important to consider whether administrative authorities are obliged to pass speaking orders.

The purpose of this paper is to make a search for judicial justifications for insisting on recording the reasons by quasi-judicial bodies and to ascertain as to what extent they are applicable to administrative bodies.

Justifications

Effective supervision by courts

The idea of the Supreme Court behind the insistence on recording of reasons by quasi-judicial bodies is best illustrated by the decision in *Travancore Rayons Ltd.* v. *Union of India.*[6] The court observed :

> The Central Goverment is by Section 36 invested with the judicial power of the State. Orders involving important disputes are brought before the Government. The orders made by the Central Government are subject to appeal to this Court under Article 136 of the Constitution. It would be impossible for this Court, exercising jurisdiction under Article 136, to decide the dispute without a speaking order of the authority, setting out the nature of the dispute, the argument in support thereof raised by the aggrieved party and reasonably disclosing that the matter received due consideration by the authority competent to decide the dispute. Exercise of the right to appeal to this Court would be futile, if the authority chooses not to disclose the reasons in support of the decision reached by it. A party who approaches the Government in the exercise of a statutory right, for adjudication of a dispute is entitled to know... the reasons for recording a decision against him. To enable the High Court or this Court to exercise its constitutional powers, not only the decision, but an adequate disclosure of materials justifying an inference that there has been a judicial consideration of the

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

> dispute by an authority competent in that behalf in the light of the claim made by the aggrieved party, is necessary. If the officer acting on behalf of the Government chooses to give no reasons, the right of appeal will be devoid of any substance.[7]

The observation makes it clear that the courts cannot effectively provide constitutional remedies unless they are apprised of the consideration underlying the action under attack. It is suggested that these and other decisions even though made in relation to article 136 are equally applicable to the exercise of writ jurisdiction under articles 32 and 226. The legality of administrative orders in writ proceedings is generally determined with the aid of evidence in the form of an affidavit. An effective exercise of supervisory and review jurisdiction of the courts necessitates that the repository of administrative power must record its reasons.

In *Bhagat Raja* v. *Union of India*[8] the Supreme Court emphasized the need for recording of reasons. The court said:

> It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected" or "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal.[9]

In short the orderly process of review requires that the grounds upon which the administrative authority acted be clearly disclosed and adequately sustained.[10] The observation of the US Supreme Court is pertinent to be noted here. The court said:

> The precise grounds for the Commission's determination that only certain commodities could be carried and that only a few could be

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7. *Id.* at 864.

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

9. *Id.* at 1610. In *Woolcombers of India Ltd.* v. *Woolcombers Workers' Union*, A.I.R. 1973 S.C. 2758, the Supreme Court stated that a judgment which does not disclose the reasons will be of little assistance to the court. The court will have to wade through the entire record and find for itself whether the decision on appeal is right or wrong. In many cases this investment of time and industry will be saved if reasons are given in support of the conclusions. *Id.* at 2761.

10. See *Securities and Exchange Commission* v. *Chenery Corporation*, 318 U.S. 80 (1942). The US Supreme Court in this case held that an administrative order cannot be upheld unless the grounds upon which the agency acted in the exercise of its powers were those upon which its action can be sustained. In order to ascertain this, the order under review must be a speaking one. See also *Phelps Dodge Corporation* v. *National Labour Relations Board*, 313 U.S. 177 (1940); *United States of America* v. *Carolina Freight Carriers Corporation*, 315 U.S. 475 (1941).

> transported between designated points are not clear. It is impossible to say that the standards which we have set forth were applied to the facts in this record. Hence .the defect is not merely one of the absence of a "suitably complete statement" of the reasons for the decision; it is the "lack of the basic or essential findings required to support the Commission's order". ...That review certainly entails an inquiry as to whether the Commission has employed those statutory standards. If that inquiry is halted at the threshold by reason of the fact that it is impossible to say whether or not those standards have been applied, then that review has indeed become a perfunctory process.[11]

The Indian Supreme Court made observations to the same effect in *Harinagar Sugar Mills* v. *Shyam Sunder*.[12] The court said:

> If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this court under Art. 136 of the Constitution, we fail to see how the power of this court can be effectively exercised if reasons are not given by the Central Government in support of its order.[13]

These decisions make it clear that the effective exercise of the Supreme Court's appellate jurisdiction requires a speaking order. Likewise an effective exercise of the court's supervisory jurisdiction necessitates recording of reasons by administrative authorities. This proposition is supported by the fact that the supervisory jurisdiction of the High Courts and the Supreme Court is very limited. While exercising the supervisory jurisdiction over administrative authorities the court is not acting as an appellate forum "where the correctness of an order of the Government could be canvassed and, indeed, it has no jurisdiction to substitute its own view as to the necessity or desirability of initiating disciplinary proceedings, for the entirety of the power, jurisdiction and discretion in that regard is vested by law in the Government. The only question which could be considered by the court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide for satisfying a private or personal grude of the authority."[14]

It is reasonably clear that a failure to take into account relevant conisderations or taking into account irrelevant considerations will amount

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11. *Carolina, supra* note 10 at 488-89.
12. A.I.R. 1961 S.C. 1669.
13. *Id* at 1678.
14. *S. Partap Singh* v. *State of Punjab*, A.I.R. 1964 S.C. 72 at 74-75.

to an error of law.[15] The availability of this ground for review will almost certainly be increased if the courts adhere to the doctrine that an administrator exercising a discretionary power may be obliged to state the grounds for a particular decision if requested to do so.[16] In *Rex.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw*,[17] the court held that it has jurisdiction to quash by certiorari the decision of an inferior tribunal when the latter has embodied the reasons for its decision in its order and those reasons are bad in law. It is suggested that the duty to make a speaking order flows from the constitutional provisions providing remedies to an aggrieved party. If reasons are not given the supervisory courts would have to wade through the whole record to ascertain whether the decision under review is sustainable or not.[18]

Requirement of natural justice

The most significant rule devised by the courts to prevent excess or abuse of power by administrative authorities is the rule of natural justice. It ensures that a statutory authority arrives at a just decision and is calculated to act as a healthy check on the misuse or abuse of power. In the words of the Supreme Court :

> [N]atural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication to make fairness a creed of life... .It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law.[19]

The Committee on Ministers' Powers observed :

> It may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or qausi-judicial... .And we think it beyond all doubt that there is from the angle of broad political expediency a real

15. D.G. Benjafield and H. Whitmore, *Principles of Australian Administrative Law* 185 (4th ed. 1971). See, especially, *R.* v. *Medical Appeal Tribunal*; *Ex-parte Gilmore*, [1957] 1 Q.B. 574 and *Baldwin & Francis Ltd.* v. *Patents Appeal Tribunal*, [1959] A.C. 663 in *id note* 68. See also *Murlidhar Agarwal* v. *State of Uttar Pradesh*, A.I.R. 1974 S.C. 1924 In *Madhya Pradesh Industries Ltd.* v. *Union of India*, A.I.R. 1966 S.C. 671, Subba Rao J. (as he than was) said: [I]f reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction." *Id.* at 675.

16. Benjafield and Whitmore, *supra* note 15.

17. [1951] 1.K.B. 711. Lord Goddard C.J. observed : "I have no doubt but that they [tribunals] will welcome, that this court should be able to give guidance to them if, in making their orders, they make their orders speaking orders, so that this Court can then consider them if they are brought before the court on certiorari." *Id.* at 724.

18. *Woolcombers*, *supra* note 9.

19. *Mohinder Singh Gill* v. *Chief Election Commissioner*, A.I.R. 1978 S.C. 851 at 870.

> advantage in communicating the grounds of the decision to the parties concerned and, if of general interest, to the public. ....Any party affected by a decision should be informed of the reasons on which the decision is based; indeed it is generally desirable that the fullest amount of information compatible with the public interest should be given.[20]

It is now settled law that every quasi-judicial order must be supported by reasons. The justification underlying this judicial insistence is well illuminated by the Supreme Court's observations in *Siemens Engineering and Manufacturing Co. of India* v. *Union of India.*[21] The court said :

> If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they must have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.[22]

Similarly, in *A.K. Kraipak* v. *Union of India,*[23] the Supreme Court observed:

> If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries.[23a]

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20. *Committe on Ministers' Powers Report* 80 and 100 (Cmd. 4060) (reprint 1959). But see *R.* v. *Gaming Board for Great Britain, Ex parte Benaim and Khaida,* [1970] 2 Q.B. 417. In *K.S. Abdulla* v. *District Collector,* A.I.R. 1972 Ker. 202, the High Court of Kerala said that the "information available, the conclusion arrived at, and the grounds on which the same are rested, might well be matters which cannot possibly be disclosed, lest the sources of information themselves should dry up, and the disclosure should provoke reactions against the informants." *Id.* at 203.

21. A.I.R. 1976 S.C. 1785.

22. *Id.* at 1789.

23. A.I.R. 1970 S.C. 150. See also *State of Orissa* v. *Binapani Dei,* A.I.R. 1967 S.C. 1267.

23*a*. *Id.* at 157.

Satisfaction of affected party

The requirement to give reasons gives satisfaction to the party against whom the administrative order is made.[24] This is embodied in the doctrine that justice should not only be done but should also appear to be done. This justification is applicable to every sort of function whether it be termed as quasi-judicial or purely administrative. An order without reason is ex facie arbitrary and the aggrieved party may wonder what is the basis for the decision. "Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice."[25]

Introduction of clarity and exclusion of arbitrariness

The rule of law is the antithesis of arbitrariness. As mentioned earlier an order which does not of itself speak is ex facie arbitrary. To quote the US Supreme Court, "[t]he administrative process will best be vindicated by clarity in its exercise."[26] The requirement under this head is that the administrative authority must give clear indication that it has exercised the power with which the law has empowered it. The very search for reasons will put the authority on the alert and minimize the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by reasonable men and will discard irrelevant or extraneous considerations.[27] By "releasing the clutch of unconscious preference and irrelevant prejudice" judicial review ultimately enables the public to repose confidence in the process as well as the judgments of decision makers. The Supreme Court also observed in *Mahabir Prasad* v. *State of Uttar Pradesh*[28] that "[s]atisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority."[29]

Application of mind

It is a well settled principle of administrative law that administrative authorities must apply their mind to the facts of each case before coming to a decision. The courts will interfere when there has been no dispassio-

24. *Madhya Pradesh Industries Ltd., supra* note 15 at 674.

25. *Woolcombers, supra* note 9 at 2761. In *Breen* v. *Amalgamated Engineering Union*, [1971] 1 All E.R. 1148, Lord Denning said that "the giving of reasons is one of the fundamentals of good administration." *Id.* at 1154.

26. *Phelps Dodge Corporation, supra* note 10. See also *Carolina, supra* note 10.

27. In *Jagannath Kashinath Kavalekar* v. *Union of India*, A.I.R. 1967 Del. 121, the Delhi High Court observed that "[in] the absence of reasons it is impossible by the Courts exercising appellate powers, or the powers of superintendence, to see whether or not the authority was influenced by any extraneous considerations." *Id.* at 124.

28. A.I.R. 1970 S.C. 1302.

29. *Id.* at 1304. In *Madhya Pradesh Industries Ltd., supra* note 15, the court observed: "A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard." *Id.* at 675.

nate application of the mind or where there is nothing to indicate that the mind has been applied. While dealing with the exercise of the advocate-general's power under section 92 of the Code of Civil Procedure 1908, the Kerala High Court observed in *Mayer Simon Parur* v. *Advocate-General of Kerala*[30] that it is entitled to know why the consent has been refused by the advocate-general. The order must indicate that mind has been applied to the facts and materials. The court in the instant case held that the absence of reasons in the order under review made it invalid. It observed that "the order is so laconic as not to indicate any application of the mind by the Advocate-General to the considerations to which he is required to bestow his attention. There is no material from which the court can be satisfied that the Advocate-General applied his mind and exercised his discretion in refusing consent to the applicants."[31]

In *Mahabir Prasad* the court observed :

> It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him : it must appear that he has reached a conclusion which is according to law and is just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution....Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency].[32]

The reasoning of the court in this case that the order must disclose that the authority has reached a conclusion according to law is applicable to administrative functions also, since it is a well established principle that administrative decisions must not contravene the law.[33]

Onus of proof

A heavy burden of proof is generally placed on a person who assails the administrative action.[34] An aggrieved person cannot discharge this

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30. A.I.R. 1975 Ker. 57.

31. *Id.* at 71. Blain J. in *Re K.(H.) (an infant)*, [1967] 1 All E.R. 226, observed : "I would only say that an immigration officer having assumed the jurisdiction granted by those provisions is in a position where it is his duty to exercise that assumed jurisdiction, whether it be administrative, executive or quasi-judicial, fairly, by which I mean applying his mind dispassionately to a fair analysis of the particular problem and the information available to him in analysing it." *Id.* at 235. See also *Breen*, *supra* note 25.

32. *Supra* note 28, at 1304. See also *State of Punjab* v. *Bakhtawar Singh*, A.I.R. 1972 S.C. 2083.

33. See *State of Gujarat* v. *Krishna Cinema*, A.I R. 1971 S.C. 1650

34. See *Narayan Govind Gavate* v. *State of Maharashtra*, A.I.R. 1977 S.C. 183 at 189. See also M.P. Jain and S.N. Jain, *Principles of Administrative Law* 526-29 (3rd ed 1979, reprint 1981).

burden unless he is aware of the reasons for the decision under review.[35] The obervations of Megaw J. in *Iveagh (Earl)* v. *Minister of Housing and Local Government*[36] are noteworthy :

> The reasons are given in pursuance of a statutory duty imposed by s. 12 of the Tribunals and Inquiries Act, 1958, in order that an aggrieved party may know, and, if necessary, a court may decide, whether the minister's decision has or has not been reached as a result of the application of correct principles of law and correct construction of the relevant enactment. The onus is on the applicant to show, if he can, that the principle applied or what construction has been adopted (at least where it is known that there is an issue on these matters), the purpose of Parliament in enacting s. 12 of the Tribunals and Inquiries Act, 1958, may be thwarted, and an aggrieved party—possibly with much at stake—may in effect be fighting with one hand tied behind his back, because the onus is on him to show an error of principle. Difficulty of interpretation or obscurity of the stated reasons may effectively conceal or disguise an error of principle.[37]

Conclusion

The author is of the opinion that the correct statement of law is laid down by Bhagwati J. in *Bhagat Raja.* He observed that "the case for giving of reasons or making a speaking order becomes much more stronger when the decision can be challenged not only by the issue of a writ of certiorari but an appeal to this court."[38] An insistence upon the reasons is no intrusion into the administrative domain. Such speaking decisions serve the additional purpose, where provisions for appeal or revision are made, of apprising the parties and the reviewing tribunal of the factual basis of the action of such tribunal so that persons concerned and the reviewing tribunal may determine whether or not the case has been decided upon the evidence and the law or, on the contrary, upon arbitrary or extra-legal considerations. When a decision is not accompanied by findings that speak, the reviewing tribunals are deprived of their powers of deciding whether the order under review follows, as a matter of law, from the facts, stated as its basis, and also whether the facts so stated have any substantial

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35. *Padfield* v. *Minister of Agriculture, Fisheries and Food,* [1968] I All. E.R. 694 where Lord Upjohn said that "if he [a minister] does not give any reason for his decision it may be, if circumstances warrant it, that a court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and directing a prerogative order to issue accordingly." *Id.* at 719. See also *Minister of National Revenue* v. *Wrights Canadian Ropes Ltd.*, [1949] A.C. 109 at 122.

36. [1961] 3 All E.R. 98.

37. *Id* at 107. See also *American Trucking Associations* v. *United States of America,* 344 U.S. 298 (1952).

38. *Supra* note 8 at 1615.

support in the evidence. It is for this reason that the necessity of giving reasons is termed as something far from technicality. Insistence upon reasons effectively ensures against star chamber methods to make certain that justice shall be administered according to facts and law.[39]

39. *Supra* note 27.