Reasoned Decisions as a Check upon the Arbitrary Use of Discretionary Powers by the Administrative Authorities -A Comparative Study-

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Reasoned Decisions as a Check upon the Arbitrary Use of Discretionary Powers by the Administrative Authorities - A Comparative Study-

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Abstract

Reason is heartbeat of every decision. Every order must contain reasons in support of it. Speaking orders or reasoned decision is necessary if the judicial review is to be effective. The significance of the reasoned decisions as a check upon the arbitrary use of administrative power is straightforward. A party has a right to know the result of inquiry and the reasons in support of the decision. But the requirement that reasons be given does more than merely vindicate the right of the individual to know why a decision detrimental to him has been given. This is so because the obligation to give a reasoned decision is a substantial check upon the abuse of power. Speaking orders are necessary to make judicial review effective. A decision supported by reason is much less likely to rest on caprice or careless considerations. The giving of reasons convinces those subject to the decision that they are not arbitrary and ensures that they are not, in fact, arbitrary.

Keywords: Reasoned decision, Natural Justice, Administration, Discretion, Tribunals

Introduction

Reasons are the link between the materials on which certain conclusion are based and the actual conclusions.[1]

Transparency is a hallmark of any good administrative body and a trait cherished by a democratic country. The ongoing practice in all nations governed by rule of law and constitutional governance it is to give reasons for its decisions and is the lifeblood of any judicial action. But pertinent question is about the legal positions when

[1] . Steel Authority of India Limited, V. S.T.O. 2008.SCC 407

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there are no statutory obligations to give reasoned. Does the principle of public law require that reasons should be given for administrative actions?

The principle of giving reasoned decisions has slowly taken its root is one of the principles of natural justice. So the principle of natural justice has twin ingredients; **firstly,** the person who is likely to be adversely affected by the action of the authority should be given notice to show cause thereof and granted an opportunity of hearing and **secondly,** the order so passed by the authorities should provide reasons for arriving to such conclusion showing appropriate applications of mind. Violations of either of them could in the given facts and circumstances of the case. [2]

Until a few years back, it was thought that the requirement by adjudicatory bodies to give reasons for their decision was not a part of natural justice and accordingly, they were not obliged to do so. However there has been some development in the civil procedure that highlight the importance of providing reasons for judicial decisions. For example USA courts have insisted upon recording of reasons for its decision by an administrative authority on the premise that it should give clear indication that it has exercised the discretion with which it has been empowered. The said requirement of recording reasons has also been justified on the basis that such a decisions is subject to judicial review and "the Courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review"

The obligation to give reason for judicial or quasi-judicial decision has been particularly implied where the statute provide for appeal, review or revision against those orders. If a quasi- judicial decision is subject to appeal, the law necessarily implies the requirement of reasons; otherwise the right of appeal shall become an "empty formality". Even where the statute does not provide for an appeal or revision, the administrative authority is required to give reason, if they are discharging quasi-judicial functions. [3]

To address the above-mentioned research question, this research is divided into five sections. The **first** section traces, Natural justice; the **second** is Reasoned decisions as a check upon the arbitrary use of discretionary powers, the **third**, Reasoned decisions and statutory provisions, the **Fourth** Finality of decisions while the **Fifth** is about Discretionary powers .The Five Chapters build upon each other with a view to identifying valuable references for the constituents of the existing reasoned decision through a comparative approach and a check upon the arbitrary while presenting our own views.[4]

[2] . Jain, M.P, Cases and materials on Indian Administrative Law, Vol 1. Delhi, 2000, P 234.
[3] . Union of India V. E. G. Nambudiri, AIR 1991 SC 1216.
[4] . Wade Willliam , Forsyth, Christopher, Introduction to administrative Law, 1st edition, 1999, P 345.

The Objectives of the research

It is the aims of the research to secure an understanding of the law relating to Reasoned Decisions and its scope. This is sought to be achieved by looking into past decisions and also to provide a safeguard against the arbitrary exercise of power by these authorities.

Scope of the Research

The scope of this research is limited to the various case laws, precedents and observations made by eminent jurist. The existence of Reasoned Decisions in various foreign statutes has been examined in the light of judicial treatment given to them in various pronouncements. Also, the Provisions relating to Reasoned Decision in various foreign Constitutions and statute has been dealt with the help of judicial ruling.

The theme of this research is the "Reasoned decisions as a check upon the arbitrary use of discretionary powers by the administrative authorities- A study and trend. Reasoned is heartbeat of every conclusion. It introduces clarity and without the same, it becomes lifeless. The need publicly to articulate the reasoning process, upon which a decision is based, requires the administrative authority to work out all factors which are present in case.

Section One: Natural Justice

Natural Justice is envisaged in administrative law for ensuring fair exercise of power by administrative agencies. This exercise is possible when the power is used according to fair procedure. The universal rule of fair procedure is *audi alteram partem*-hear the other party. Thus hearing mean "natural justice".[5]

A: Conceptual Dimension

Natural justice is an *ethico*-legal concept which is based on natural feelings of human beings. Rules of natural justice have developed with the growth of civilizations and the content thereof is often considered as party measures of the level of the civilization and rule of law prevailing in the community.[6] It is grate principles of humanization which informs law and procedures with fairness and impartiality.

Natural justice has various meanings among international scholars, commentators, lawyers and systems of law including an approximate synonym for divine law, and also a form of *jus gentium* or the common law of nation.

[5] . Jain and Jain, Principles of administrative law,2nd edition, 1986, P. 218.
[6] . Justice Krishna lyer in Mohinder Singh Gill V. Chief Election Commissioner, AIR, 1978, SC 851.

Natural justice is an ideal element in administrative law. In this sense, natural justice is known as "natural law" "universal law" " divine justice" " universal justice" or "fair play in action". [7]

Natural law is a concept of varying content. However, this does not lead to the conclusion that at given time no fixed principles of natural justice can be identified. Through various decisions of Courts, principles of natural justice can be ascertained. However it is their applications in a given situation which depends upon multifarious factors. The reason is obvious. For fairness itself, is a flexible, pragmatic and relative concept. It is not a bull in a China shop or a bee in bonnet of one. The truth is that the principle of natural justice are neither cast in rigid nor they can be put in legal strait-jacket. They are not immutable and can be adapted, modified and excluded by statute, rules or Constitution except where such exclusion is not charged with the vice of unreasonableness and consequential voidness.[8]

B: Nature and Scope

Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rule of natural justice are basic values which a man has cherished throughout the ages. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is apart of law which relates to administrations of justice. Rule of natural justice are indeed great assurance of justice and fairness.

There is certain basic value which a man has always cherished. They can be described as natural law. As a reasonable being, a man must apply this part of law to human affairs. They underlying object of rules of natural justice is to ensure fundamental liberty and rights of subjects. They thus serve public interest. The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Its essence is good conscience in a given situations; nothing more but nothing less.[9]

Indeed, natural justice is pervasive facet of secular law whereas spiritual touch enlivens legislations, administrations and adjudications to make fairness a creed of life. It has many colors and shades, many forms and shapes and, save where valid law excludes it applies when people are affected by acts of authority. It is the bone of

[7] . K.I. Shepard v. Union of India , AIR 1988 SC 686.
[8] . Jain, M.P. Treaties on Administrative Law, Vol, 1 (Chapter I to XIX) Wadhwa and 5) Co, New Delhi, 1999, P.105.
[9] . H.W.R. Wade, Administrative Law, 6th edition, 1899, P. 548.

healthy government, recognized from earliest times and not a mystic testament of judge-made law.

In fact, from the legendry days of *Adam and of Kautlya's Arthshastra*, the rule of law has had this stamp of natural justice which makes it social justice.[10]

C: Principles of Natural Justice

As stated above, natural justice has meant many things to many writers, and systems of law. It has many color, shapes, shades and forms. Rule of natural justice are not embodied rules and they cannot be imprisoned within the strait – jacket of a rigid formula.[11]

The traditional English law recognizes two principles of natural justice :

1. *Nemo debet esse judex in propria cause* no man shall be a judge in his own case, or no man can act as both at the one and the same time –a party or a suitor and also as a judge, or the deciding authority mist be impartial and without bias: and
2. *Audi alteram partem:* Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.[12]

   So the first requirement of natural justice is that the judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as a judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A judge must be of sterner stuff. His mental equipoise must always remain from undefeated. He should not allow his personal prejudice to go into the decision – making. He must think dispassionately and submerge private feeling on every aspect of case and there is a good deal of shallow talk that the judicial robe does not change the man with it. It does if the judge is subject to bias in favor of or against either party to the dispute or is in a position that a bias can be assumed, he disqualified to act as a judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially.[13]

[10] . Mohapatra . V State of Orissa, AIR, 1984 S.C. 1572.
[11] . A.K Kraipak v. Union of India , AIR , 1970 SC, 150 & Maneka Gandhi , AIR , 1978 SC, 597
[12] . S.N. Jain, Effect of Failure of Natural justice: The ultimate Relief, 2nd edition, 1984, P. 17.
[13] . Fazalbhai V. Custodian, AIR , 1961, SC 284.

Section Two: Reasoned Decisions as a Third Principle of Natural Justice

A: Reasoned decision or speaking order.

1. *Conceptual Meaning*

A reasoned decisions or speaking order means an order speaking for itself. To put simply, every order must contain reasons in support of it. Speaking orders or reasoned decision is necessary if the judicial review is to be effective. The party affected must know why and on what grounds an order has been passed against him. This is a new principle of natural justice which has been recognized in many countries such India, USA and in Iraq but in certain circumstance, however, such system has yet to be recognized under English Law. There is no general rule of English law that reasons must be given for administrative or even judicial decisions. In India also utill very recently, it was not accepted that the requirement of passing speaking orders is one of the principles of natural justice. However, now it is established principle of natural justice.[14]

2. *Value and Significance of the Reasoned Decisions*

The value of the reasoned decisions as a check upon the arbitrary use of administrative power is very clear. A party has a right to know the result of inquiry and the reasons in support of the decision. But the requirement that reasons be given does more than merely vindicate the right of the individual to know why a decision detrimental to him has been given. This is so because the obligation to give a reasoned decision is a substantial check upon the abuse of power. A decision supported by reasons is much less likely to rest on caprice or careless considerations. The giving of reasoned serves both to convince those subject to the decision that they are not arbitrary and to ensure that they are not, in deed, arbitrary. The need publicly to articulate the reasoning process upon which a decision is based, requires the administrative authority to work out all factors which are present in case. *Lord Denning rightly says, "the giving of reasons is one of the fundamental of good administration"* [15]

So that reasoned decision means also an order which speaks by itself. Thus every order must contain reasons for support of it.[16]

Although natural justice postulates that party has right to know not only the decision but also the reasons, this is not universally established rule.[17] In certain

[14]. Wade and Forsyth, Administrative Law , 2005,6th edition, at pp. 522-27
[15]. De Smith, Judicial Review of Administrative actions, 5th edition, 2004, at pp.269-70.
[16] .R. v. Northumberland Compensation Tribunal, AIR 1952, 338.
[17]. Express News Papers Ltd. v. Union of India , AIR 1958, SC ; Syed Yakoop V. Radha Krishna, AIR 1964 SC 477.

Situation it is rigidly enforced. The duty to give reason may be statutory or non-statutory. Where the duty is required by the statute, the authority is bound to give reasoned decisions in all cases to which that provisions applies. But in the absence of statutory requirement, the courts have been emphatic to advice judicial or quasi- judicial bodies to assign reasons in such a form as to justify the order being called what are described as speaking order.[18]

B: Reasoned Decisions as a new Principle of Natural justice

Giving reasoned in support of an order is considered to be the third principle of natural justice. According to this, party has a right to know not only the result of the enquiry but also the reasons in support of the decision. The mandate of giving reasons or passing a reasoned order is not only a part of natural justice but it is a safeguard against arbitrariness. When an adjudicator is obliged to give his reasons for conclusion it is important for him to consider the matter carefully. The compulsion to give reasons introduces clarity in the order and minimizes chances of irrelevant considerations from entering a decisional process. In fact, recording of reasons ensures that the authority has applied its mind to the case and the reasons that compelled the authority to take decisions in question are relevant to the contents and scope of power vested in the authority.[19]

Today, the old" police state" has become a "welfare state". The governmental functions have increased, administrative tribunal and other executive authorities have come to stay and they are armed with wide discretionary powers. Accordingly there are all possibilities of abuse of powers by them. To provide a safeguard against the arbitrary exercise of power by these authorities, the conditions of recording reasons is imposed on them. It is true that even the ordinary law courts don't always give reasons in support of the orders passed by them when they dismiss appeal[20]

The expression (Speaking order) was first coined by Lord Chancellor Earl Cairns in a rather strange context. Therefore in the absence of a speaking order courts would not be able to understand the applications of mind to the facts and issues raised in the case, The habit of mind of an executive officers that is formed cannot be expected to change from function to function or from an act to another. So it is essential that some restriction shall be imposed on tribunal in the matter of passing order affecting the right of parties: and the *least they should do is to give reason for their orders*.[21]

The courts have justified the requirement for a speaking order on three grounds:

[18] . Harinagar Sugar Mills v. Shyamsunder Jhunlhunwala, AIR 1961 SC 1669.
[19]. De Smith, Judicial Review of administrative action,2nd edition, 1995,at p.457.
[20]. Wade, Administrative Law, 4th edition, 1994, at pp.541-545.
[21]. AIR 1966 SC 671 :(1966) 1 SCR 466.

1) The party aggrieved has the opportunity to demonstrate before the appellate or provisional court that the reasons which persuaded the authority to reject his case were erroneous;

2) The obligation to record reasons operates as a deterrent against possible arbitrary action by executive authority invested with judicial power; and

3) It gives satisfaction to the party against whom the order is made. The power to refuse to disclose reasons in support of the order is of an exceptional nature and it ought to be exercised fairly, sparingly and only when fully justified by the exigencies of an uncommon situation.[22]

Section Three: Reasoned Decision and Statutory Provisions

A Comparative Study of England, United State, India and Iraq

1. Reasons: England.

In the common law rule, which England practice such legal system, the natural justice does not require reasons to be given for decision. The committee on powers of minister however had insisted that natural justice require that there should be reasoned decision. Similarly the frank committee insisted that there should be a general practice for adjudicatory bodies to give reasons for their decision. This suggestion has been given statutory force. Where the Lord Chancellor and the Secretary of State after consultations with the council of Tribunal ,feel that giving of reasons for certain decisions taken by tribunal and ministers is unnecessary and impartial, In the cases of *padfield v. Minister of Agriculture, Fisheries and food(1968* an order made excluding the duty to give reasons ,the House of Lords said that an absence of reason could rise an inference of no good reason opening in the decision up to Judicial review.

Section 12 of the tribunal and the inquires act 1958 (now act 1971) imposes a duty upon on tribunal or minister to give reasons for the decisions under two conditions:

1. The duty to give reasons arises only when a request to give them is made to the tribunal or minister
2. No such duty arises under the act if the request is made after the decision has been given or notified. Reasoned form part of the decision and record[23]

2. Reasons: United States of America

The requirement of giving reason for decision has been given statutory force. For section 8 (b) of the American Administrative procedures Act, 1946 requires all Administrative decisions y "to be accompanied by "finding and conclusion, as well as

[22] . Ibid. at p. 675 (AIR).
[23]. Craig, Paul. Administrative Law ,Thomson, Sweet and Maxwell,2004, 4th edition, p400.

reason or basis therefore, upon all the material issues of fact, law or discretion presented on the record"[24]

Even outside the scope of the statute, it has been held that one who decides must give reason for his decision. The Supreme Court has said that the reason are essential for enabling the Court to effectively exercise its power of judicial review.[25]

3. Reasoned decision in India

As to the generality of the requirement of reasoned decisions an unanimous Court has, on a review of previous decisions firmly held that the supervisory powers of the high Court under article226 or 227[26] of the Indian Constitution or of the appellate power of the supreme Court under Article 136 over the decisions of every quasi-judicial authority would be rendered nugatory unless the inferior quasi- judicial authority gives reasons for the decisions which can be scrutinized by the superior of the land which are vested by the Constitution with the power of judicial review. If an order does not give any reason, " it does not fulfill the elementary requirement of quasi- judicial process[27].

We must quote here the following powerful observations of *Subba Rao, j.(as he then was) in M.P. industries Ltd union of India*." there is an essential distinction between a Court and an administrative tribunal. A judge is trained to look at thing objectively, but an executive officer generally looks at things from the stand point of policy and expediency. Due to this very factor that the power under article 136 of the constitution would be rendered infructuous that the Supreme Court held that even when the subject-matter was conditional, the government while exercising quasi-judicial powers must give its reasons.[28]

4. Reasoned Decision : Iraq

In Iraq, the positions are somewhat different from the other countries mentioned above. Here we would like to distinguish between the two terms (the Reason for the decision and the reasoned decision), where the reason for the decision is one of the elements of the administrative decision namely: jurisdiction, reason, object, form and objective.

So, in the absence of the reason for the decision the decision will be considered void because it is one of the fundamental elements of administrative decision, as have mentioned above. While reasoned decision is considered a condition in the form of the administrative decision, especially the written decision, and will be declared void

[24]. U.S. V. forness (1942) 125 F. 2d. 928 (942).
[25]. U.S. v. Chicago, (1935) 294 US 499 (511).
[26]. Govinda Rao. v. state of M.P. AIR 1965 SC 1222.
[27]. Bhagat Raja. v Union of India (1967) 2 SCR 302.
[28] .Been v. Amalgamated Engg. Union, 1971,I All ER 1148, 1154 : (1971) 175: (1971) 2 WLR 742.

decision when is not written. For instance, Article 36 of the Civil Service Act. No. 24 of 1960 stated that an employee cannot be transferred from his locality until after a period of not less than three years and may not be transferred before that except by public interest or urgent necessity. Article 56/3 of the same law, where the head of the administration may increase the official working hours for the purpose of completing urgent work related to his work with giving reasons for this.

Therefore, the duty to give reason may be statutory or non- statutory, where a statute requires in specific terms to give reasoned decision, the authority is bound to give reasoned decisions.[29]

A. Express provisions: whether necessary

If the statute requires recording of reasoned, then it is the statutory requirement and, therefore, there is no scope for further inquiry.[30]. Reasons are the link between the materials on which certain conclusion are based and the actual conclusions. They disclose how the mind applied the subject-matter for decisions; whither it is purely administrative or quasi- judicial. They should reveal a rational nexus between the fact considered and the conclusion reached. Only in this way can decisions recorded shown to be manifestly just and reasonable.[31]

The obligation to give reason for judicial or quasi-judicial decision has been particularly implied where the statute provide for appeal, review or revision against those orders. If a quasi- judicial decision is subject to appeal, the law necessarily implies the requirement of reasons; otherwise the right of appeal shall become an "empty formality". Even where the statute does not provide for an appeal or revision, the administrative authority are required to give reason, if they are discharging quasi-judicial functions. [32]

B. The Effect of Non–Recording of Reasons:

If reasons are required to be recorded by an adjudicating authority in support of a decision taken, naturally, the said requirement must be complied with. But if reasons are not recorded by the authority, what is the effect thereof? Is it illegality or procedural impropriety or irregularity? Is a decision without recording reasons null and void and should be ignored altogether? Or the matter has to go back for fresh decision after recording reasons? Or the Court may itself look into the relevant record and take an appropriate decision?

[29] د. علي سعد عمران , القضاء الاداري , ط1 , الرياحين , بابل , 2008 , ص 166.
[30] Union of India v. Mohan Lal Capoor,(1973) 2 SCC 836 (853-54) :AIR 1974 SC 87(93-94).
[31] .C.K. Thakker, Administrative Law,2nd edition, 1996, P.216.
[32]. Mahabir Prasad v. State of M.P. AIR 1970 SC 1320.

Section Four: Finality of Decision

Sometimes, provisions have been made in a statute by which the orders passed by the administrative tribunals and other bodies are made "final". This is known as statutory finality.[33]

A. Decisions of Tribunals

No appeal, revisions or reference against the decisions of an administrative tribunals is maintainable if the said right is not conferred by the relevant statute. Previsions can also be made foe ouster of jurisdictions of civil courts. in all these cases the decision rendered by the tribunals will be treated as "final"[34]. This statutory finality, however, will not affect the jurisdictions of the Courts and the power of judicial review of the High Court and Supreme Court is recognized by the constitution and the same cannot be taken away by any statute. if the tribunal has acted without jurisdictions, or has failed to exercise the jurisdictions vested in it, or if the order passed by the tribunal is arbitrary, perverse *of Mala fide* or it has not observed the principles of natural justice, or there is an error apparent on the face of the record or the record is *ultra vires* the Act, or there is no evidence in support of the order, or the order is based on irrelevant considerations, or where the findings recorded are conflicting and inconsistent, or grave injustice is perpetuated by the order passed by the tribunal or the order is such that no reasonable man would have made it, the same can be set aside by the High Court and the Supreme Court.

It is an appropriate at this stage to quote the following observations of Denning, L.J.

"If tribunal were to be at liberty to exceed their jurisdictions without any chick by the Courts, the rule of law would be at an end." [35]

B. Review of decisions

There is no inherent power of review with any authority unless such power is conferred by the relevant statute. The general rule is that an administrative tribunal becomes *functus officio* (ceases to have control over the matter) as soon as it passes an order and thereafter con not review its decision unless the said power is given to it by a statute and the decision must stand unless and until it is set aside by the appellate or revision authority.[36]

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[33] . Kihota Hollohan v. Zachilhu, AIR, 1993 SC. 412.
[34] .R. v. Medical Appeal Tribunal Exp Gilmore, 1957.
[35] .Justice C.K. Thakkar (Takwani),Lectures on Administrative law, 4th edition, India ,2009. P. 251.
[36] . De. D J, Interpretation and enforcement of fundamental rights, Eastern Law house,2nd edition, New Delhi. 2000, P. 244.

Again, is not a re- hearing of matter on merits. Maybe, the court might not be right in refusing relief in the" first round" but when once the order is passed by the court, a review thereof must be subject to the rules of the same and cannot be lightly entertained, "A review of judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and overloud arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of the certificate of council which should be a routine affair or a habitual step. It is neither fairness to the court which decided nor awareness of the precious public time lost what a huge backlog of dockets waiting in the queue fo disposal, for counsel to issue essay certificates for entertainment of review and fight over again the same battle which has been fought and lost.[37]

In the leading case of *Northern India Caters Ltd. V. Lt. Governor of Delhi*, Pathak , J. (as he then was) rightly observed: " whatever the natur of the proceedings, it is beyond disputes that a review proceeding cannot be equated with original hearing of the case, and the finality of the judgment delivered by the court will not be recognized *except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility".*[38]

Section Five: Discretionary Power

A. Meaning of Discretionary Power

Discretionary powers conferred on the administration are of different types. They may range from simple ministerial functions like maintains of births and deaths register to powers which seriously the right of an individual, e.g. question of property, regulation of trade, industry or business, investigation, seizure, confiscations and destructions of property, detentions of a person on subjective satisfactions of an executive authority and the like.[39]

As a general rule, it is accepted that courts have no power to interfere with the action taken by administrative authority in exercise of discretionary powers.

In *Small v. Moss*,[40] the Supreme Court of the United State of America observed;

"Into that field (of administrative discretion) the courts may not enter"

[37] . Chandra Kanta v. SK. Habib, 1975,1 SCC 674, SC AIR 1975 SC .
[38] . Hawke, Neil, Introduction to Administrative Law, Universal Book trader, Delhi,1993. P. 233.
[39] . Craig, Paul , Administrative Law , Thomson, Sweet and Maxwell , 6th edition, 2008, P.201.
[40] . 1938,279, NY,288.

Lord Halsbury[41] also expressed the same view and observed:

"Where the legislature has confided the power to a particular body with a discretion how it is to be used, it is a beyond the power of any court to contest the discretion"

In the leading case of *Roberts v. Hopwood*, the Court stated; there are many matters, which the courts are indisposed to question. Though they are the ultimate judges of what is lawful and what is unlawful to brought councils, they often accept the decisions of the local authority simply because they are themselves ill equipped to weight the merits of one solution of a particular question as against another. [42]

Thus. In almost all the democratic countries it is accepted that discretion conferred on the administration is not unfettered, uncontrolled or non- reviewable by the courts. To keep the administration within its bound, the courts have evolved certain principles and imposed some conditions and formulate certain and taking re course of these principles, they effectively control the abuse or the arbitrary exercise of discretionary powers by administrations.[43]

B. Abuse of Discretion

When discretionary power is conferred on an administrative authority, it must be exercised according to law. But as ***Markose*** says, **"When the mode of exercising a valid power is improper or unreasonable, there is an abuse of the power".** If the new and sharp axe presented by father Washington (the legislature) to young George (the statutory authority) to cut timber from the compound of father is tried on the favorite apple tree of father, an abuse of power is clearly committed..

Take the classic example of the red-haired teacher, dismissed because she had red hair. In one sense, it is unreasonable. In another sense, it is taking in to account irrelevant or extraneous considerations.it is improper exercise of power and might be described as being done in bad faith or colorable exercise of power. In fact, all these things overlap to a very great extent and run into one another.[44]

In *Sitaram Sugar Co.Ltd. v. Union of India*, the Apex Court stated; " repository of power acts *ultra vires* either when he acts in excess of his power in the narrow sense or he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness…the true position, therefore that any act of the repository or power, whether legislative or administrative or quasi- judicial , is open to challenge if it is in

[41] . Westminster Corpn. v. London and North Western Rly. Co. 1905, AC 427:LT143: 74.
[42] . De, Smith, Woolf, Jowell , Judicial Review of Administrative action ,4th edition, 2009, P. 150.
[43] .Dr.J.J.R. Upadhaya (Administrative law, 7th edition, India, 2009, P.277.
[44] .Dr. S.P.Sathe. Administrative law, 6th Edition, India, 1998, P.245.

conflict with the constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or un reasonable that no fair minded authority could ever have made it.

Excess or abuse of discretion may be inferred from the following circumstances:

a. Acting without jurisdictions.
b. Exceeding jurisdiction.
c. Arbitrary action.
d. Irrelevant consecrations.
e. Leaving out relevant considerations.
f. Mixed considerations.
g. Mala fide.
h. Collateral purpose; improper object.
i. Colorable exercise of power.
j. Colorable legislations.
k. Non- observance of natural justice.
l. Unreasonableness.[45]

As we have mentioned above these are several forms of abuse of discretion, the authority may exercise its power for a purpose different from the one for which the power was conferred or for an improper purpose or acts in bad faith, takes into account irrelevant considerations and so on. These various forms of abuse of discretions may even overlap.

Conclusion

In view of the above discussions it may be concluded:

i. Principle of reasoned decision is the heart and soul of every judicial and administrative order, so that party may know the reasons. It is a fundamental principles of the administration of justice that both parties should be heard before a decision to their rights is passed and equally fundamental principle is that an authority must give reason for its decision or order.[46]
ii. The reason should be proper, Intelligible and adequate. The application of the first two of these presents no problem. If the reasons given are improper they will reveal some flaw in the decisions – making process which will be open to challenge on some ground other than the failure to give reasons. If the reason given is unintelligible, this will be equivalent to giving no reasons at all."

[45] Dr. U.P.D.Kesari, Administrative law, 18th Edition ,India, 2010, P.177.
[46]. Kranti Associates Pvt. Ltd. vs. Masood ahmed Khan, citation, 2011
(273) ELT 345 (SC)

iii. The requirement is the most valuable safeguard against any arbitrary exercise of power by the adjudication authority. The reason recorded by such authority will be judicially scrutinized, and if the court finds that they were irrelevant or extraneous, incorrect or non-existent, the order passed by the authority may be set aside. Even when the statute does not laydown expressly that requirement, the primary or original authority must pass a speaking order which means an order speaking for itself. To put it simply, every order must contain reason in support of it is" the giving reason is one of the fundamental of good administration.[47]

iv. Reasons in support of decisions must be cogent, clear and succinct. A presence of reasons or rubber-stamp reasons 'is not to be equated with a valid decision making process .It cannot be doubted that transparency is the *sine quanon* 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. Therefore, for development of law, requirement of giving reasons for the decision.[48]

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