A M/S. KRANTI ASSOCIATES PVT. LTD. & ANR.

v.

SH. MASOOD AHMED KHAN & OTHERS

(Civil Appeal No. 7472 of 2010)

SEPTEMBER 08, 2010

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[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Judgment/Order: Necessity of reasons – Held: Reasons are indispensable component of a decision making process C *– Even in administrative decisions, reasons should be recorded, if such decisions affect anyone prejudicially – Thus, a quasi-judicial authority must record reasons in support of its conclusions – National Commission has the trappings of a civil court and is a high-powered quasi-judicial forum for* D *deciding lis between the parties – A non-reasoned order passed by National Commission is thus liable to be set aside – Consumer Protection Act, 1986 – ss.13, 22 – Penal Code, 1860 – ss.193, 228 – Code of Criminal Procedure, 1973 – s.195 – Natural justice – Administrative law – Quasi-judicial* E *authority.*

Appeal: Separate appeals – Held: Each appeal should be heard independently – Natural justice – Right of hearing.

Two separate appeals were filed by the builder and F **the Corporation Bank challenging the orders of the National Consumer Disputes Redressal Commission (National Commission). The case of the appellants was that the National Commission dismissed their revision petitions by non-speaking orders.**

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Allowing the appeals, the Court

HELD: 1.1. The power and procedure applicable to the National Consumer Disputes Redressal Commission

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(National Commission) has been provided in Section 22 of the Consumer Protection Act. A perusal of Section 22(1) would show that the Sections 12, 13, 14 of the CP Act with necessary modifications are applicable to the decision making process by the National Commission. Under Section 13 of the CP Act, the District Forum has been vested, in certain matters, with the powers of the civil court while trying a suit. Section 13(4) of CP Act is applicable to the National Commission in view of Section 22(1) thereof. Similarly, Sections 13(5), (6) and (7) will also apply to the National Commission in view of Section 22(1). On a perusal of Sections 13(4), (5), (6) and (7) of the Consumer Protection Act, 1986, it is clear that the National Commission has been vested with some of the powers of a civil court. [Paras 11-12] [1078-G-H; 1079-A-C]

1.2. Under Section 13(5) of the Act, every proceeding of the National Commission will be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, IPC, and the said Commission shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure. These provisions make it clear that the said Commission has the trappings of a civil court and is a high-powered quasi-judicial forum for deciding *lis* between the parties. [Paras 13-14] [1079-H; 1080-A-B]

2.1. As regards the necessity of giving reasons by a body or authority in support of its decision, the discussion in various judgments is summarized as follows: In India, the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially. A quasi-judicial authority must also record reasons in support of its conclusions. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not

A only be done it must also appear to be done as well. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. Reasons reassure that discretion has been exercised by the decision maker
B on relevant grounds and by disregarding extraneous considerations. 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.
C Reasons facilitate the process of judicial review by superior courts. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision
D making justifying the principle that reason is the soul of justice. Insistence on reason is a requirement for both judicial accountability and transparency. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to
E know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. Reasons in support of decisions must be cogent, clear and succinct. A pretence 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
F *sine qua non* 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. Since the requirement to record reasons emanates from the broad
G doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. [Para 51] [1090-G-H; 1091-A-C; 1092-B-H; 1093-A]

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A.K. Kraipak and others v. Union of India and others **AIR 1970 SC 150;** *Kesava Mills Co. Ltd. and another v. Union of India and others* **AIR 1973 SC 389;** *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala and others* **AIR 1961 SC 1669;** *Bhagat Raja v. Union of India and others* **AIR 1967 SC 1606;** *M/s. Mahabir Prasad Santosh Kumar vs. State of U.P and others* **AIR 1970 SC 1302;** *M/s. Travancore Rayons Ltd. v. The Union of India and others* **AIR 1971 SC 862;** *M/s. Woolcombers of India Ltd. v. Woolcombers Workers Union and another* **AIR 1973 SC 2758;** *Union of India v. Mohan Lal Capoor and others* **AIR 1974 SC 87;** *Siemens Engineering and Manufacturing Co. of India Ltd. v. The Union of India and another* **AIR 1976 SC 1785;** *Smt. Maneka Gandhi v. Union of India and Anr.* **AIR 1978 SC 597;** *Rama Varma Bharathan Thampuran v. State of Kerala and Ors.* **AIR 1979 SC 1918;** *Gurdial Singh Fijji v. State of Punjab and Ors.* **(1979) 2 SCC 368;** *Shri Swamiji of Shri Admar Mutt etc. etc. v. The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors.* **AIR 1980 SC 1;** *M/s. Bombay Oil Industries Pvt. Ltd. v. Union of India and Others* **AIR 1984 SC 160;** *Ram Chander v. Union of India and others* **AIR 1986 SC 1173;** *M/s. Star Enterprises and others v. City and Industrial Development Corporation of Maharashtra Ltd. and others* **(1990) 3 SCC 280;** *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi and others* **(1991) 2 SCC 716;** *M.L. Jaggi v. Mahanagar Telephones Nigam Limited and others* **(1996) 3 SCC 119;** *Charan Singh v. Healing Touch Hospital and others* **AIR 2000 SC 3138;** *Som Datt Datta v. Union of India and others* **AIR 1969 SC 414;** *S.N. Mukherjee v. Union of India* **AIR 1990 SC 1984 – relied on.**

Rigina vs. Gaming Board Ex parte Benaim **(1970) 2 WLR 1009;** *Marta Stefan v. General Medical Council* **(1999) 1 WLR 1293;** *R v. Civil Service Appeal Board, ex parte Cunningham* **(1991) 4 All ER 310;** *North Range Shipping*

A *Limited v. Seatrans Shipping Corporation* **(2002) 1 WLR 2397;** *English v. Emery Reimbold and Strick Limited* **(2002) 1 WLR 2409;** *Cullen v. Chief Constable of the Royal Ulster Constabulary* **(2003) 1 WLR 1763;** *Securities and Exchange Commission v. Chenery Corporation* **(1942) 87 Law Ed 626;**
B *John T. Dunlop v. Walter Bachowski* **(1975) 44 Law Ed 377;** *Anya v. University of Oxford* **2001 EWCA Civ 405 – referred to.**

Strasbourg Jurisprudence **(1994) 19 EHRR 553 –**
C **referred to.**

2.2. In the case of the builder, the National Commission did not give any reason and dismissed the revision petition by passing a cryptic order. The said Commission cannot considering the way it is structured,
D **dismiss the revision petition by refusing to give any reasons and by just affirming the order of the State Commission. The order of the National Commission is set aside and the matter is remanded to it for deciding the matter by passing a reasoned order. [Paras 3, 4, 52]**
E **[1077-C-D; 1093-D]**

Defence of Judicial Candor **(1987) 100 Harward Law Review 731-737 by David Shapiro – referred to.**

2.3. In so far as the appeal filed by the Bank is
F **concerned, the National Commission gave some reasons in its finding. The perusal of the order of the State Commission dated 26.7.07 in connection with the appeal filed by the Bank shows that the State Commission did not independently consider Bank's appeal. The State**
G **Commission dismissed the Bank's appeal for the reasons given in its order in connection with the appeal of the builders. Since the Bank had filed a separate appeal, it had a right to be heard independently in support of its appeal. That right was denied by the State**
H **Commission. In that view of the matter, the order dated**

26.7.07 passed by the State Commission as also the order of the National Commission dated 4th April 2008 which had affirmed the order of the State Commission are set aside and the case is remanded to the State Commission for hearing on merits. [Paras 54-57] [1094-A-E]

Case Law Reference:

AIR 1970 SC 150	relied on	Para 15
AIR 1973 SC 389	relied on	Para 16
(1970) 2 WLR 1009	referred to	Para 16
AIR 1961 SC 1669	relied on	Para 19
AIR 1967 SC 1606	relied on	Para 22
AIR 1970 SC 1302	relied on	Para 23
AIR 1971 SC 862	relied on	Para 24
AIR 1973 SC 2758	relied on	Para 25
AIR 1974 SC 87	relied on	Para 26
AIR 1976 SC 1785	relied on	Para 27
AIR 1978 SC 597	relied on	Para 28
AIR 1979 SC 1918	relied on	Para 31
(1979) 2 SCC 368	relied on	Para 32
AIR 1980 SC 1	relied on	Para 33
AIR 1984 SC 160	relied on	Para 35
AIR 1986 SC 1173	relied on	Para 36
(1990) 3 SCC 280	relied on	Para 37
(1991) 2 SCC 716	relied on	Para 38
(1996) 3 SCC 119	relied on	Para 39

A	**AIR 2000 SC 3138**	**relied on**	**Para 40**
	AIR 1969 SC 414	**relied on**	**Para 41**
	AIR 1990 SC 1984	**relied on**	**Para 42**
	(1999) 1 WLR 1293	**referred to**	**Para 45**
B	**(1991) 4 All ER 310**	**referred to**	**Para 46**
	(2002) 1 WLR 2397	**referred to**	**Para 48**
	(2002) 1 WLR 2409	**referred to**	**Para 49**
C	**(2003) 1 WLR 1763**	**referred to**	**Para 49**
	(1942) 87 Law Ed 626	**referred to**	**Para 50**
	(1975) 44 Law Ed 377	**referred to**	**Para 50**
D	**2001 EWCA Civ 405**	**referred to**	**Para 51**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7472 of 2010.

From the Judgment & Order dated 31.08.2007 of the
E National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2889 of 2007.

WITH

F C.A. No. 7474 of 2010.

Krishnan Venugopal, Dr. Sarabjit Sharma, Seema Agarwal, Sumit Sharma, Dr. S.K. Verma, Anshu Mahajan, Gaurav Kejriwal, Anilendra Pandey, Priya Kashyap, M.P. Shorawala for the appearing parties.

G The Judgment of the Court was delivered by

GANGULY, J. 1. Leave granted.

2. These two appeals, one at the instance of the builder

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and the other at the instance of the Corporation Bank, have been filed impugning the Order of National Consumer Disputes Redressal Commission (hereinafter, the said Commission). A

3. In the case of the builder, the said Commission has not given any reason and dismissed the revision petition by passing a cryptic order dated 31.8.2007 which reads as under: B

"Heard.

In view of the concurrent findings of the State Commission, we do not find any force in this revision petition. C

The revision Petition is dismissed."

4. In so far as the case of the builder is concerned, this Court is of the opinion that the said Commission cannot, considering the way it is structured, dismiss the revision petition by refusing to give any reasons and by just affirming the order of the State Commission. D

5. The said Commission has been defined under Section 2(k) of the Consumer Protection Act, 1986 (hereinafter CP Act) as follows: E

"2(k) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of Section 9;" F

6. Under section 9(c) of CP Act, the said Commission has been established by the Central Government by a notification.

7. The composition of the said Commission has been provided under Section 20 of the CP Act and wherefrom it is clear that the said Commission is a high-powered adjudicating forum headed by a sitting or a retired judge of the Supreme Court. G

8. Section 21 of the CP Act provides for the jurisdiction of the said Commission. H

A 9. In order to appreciate the questions involved in this case, the provision relating to jurisdiction of the said Commission is set out hereunder:

"21. Jurisdiction of the National Commission.- Subject to the other provisions of this Act, the National Commission B shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or C services and compensation, if any, claimed exceeds [rupees one crore]; and

(ii) appeals against the orders of any State Commission; and

D (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has E failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

10. Under Section 23 of the CP Act, an appeal would lie F against the order of the said Commission passed in exercise of its powers under Section 21(1)(a), to this Court, within 30 days, subject to extension of time by this Court on sufficient cause being shown. Under Section 21(1)(b), the said Commission exercises revisional power over orders of State Commission.

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11. The power and procedure applicable to the said Commission has been provided under Section 22 of the CP Act. A perusal of Section 22(1) would show that Sections 12, 13 and 14 of CP Act, with necessary modification, are H applicable to the decision making process by the said

Commission. Under Section 13 of the CP Act, the District Forum has been vested, in certain matters, with the powers of a Civil Court while trying a suit. Section 13(4) of CP Act is applicable to the said Commission in view of Section 22(1) thereof. Similarly, Sections 13(5), (6) and (7) will also apply to the said Commission in view of Section 22(1).

12. On a perusal of Sections 13(4), (5), (6) and (7) of the CP Act, it is clear that the said Commission has been vested with some of the powers of a Civil Court. The following powers have been vested on the said Commission:

> "13(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-
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> (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,
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> (ii) the discovery and production of any document or other material object producible as evidence,
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> (iii) the reception of evidence on affidavits,
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> (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source,
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> (v) issuing of any commission for the examination of any witness, and
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> (vi) any other matter which may be prescribed.

13. Under Section 13(5) of CP Act, every proceeding of the said Commission will be deemed to be a judicial

A proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, and the said Commission shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

B 14. The above provisions make it clear that the said Commission has the trappings of a Civil Court and is a high-powered quasi-judicial forum for deciding lis between the parties.

15. The necessity of giving reason by a body or authority C in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing D point in the judgment of this Court in *A.K. Kraipak and others vs. Union of India and others* reported in AIR 1970 SC 150.

16. In *Kesava Mills Co. Ltd. and another vs. Union of India and others* reported in AIR 1973 SC 389, this Court approvingly referred to the opinion of Lord Denning in *Rigina* E *vs. Gaming Board Ex parte Benaim* [(1970) 2 WLR 1009] and quoted him as saying "that heresy was scotched in Ridge and Boldwin, 1964 AC 40".

17. The expression 'speaking order' was first coined by F Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the G report)

18. This Court always 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'.

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19. In the case of *Harinagar Sugar Mills Ltd. vs. Shyam Sunder Jhunjhunwala and others,* AIR 1961 SC 1669, the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111 Clause (3) of Indian Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, Government did not give any reason. The company challenged the said decision before this Court.

20. The other question which arose in *Harinagar* (supra) was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

21. Even though in *Harinagar* (supra) the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (Para 23, page 1678-79).

22. Again in the case of *Bhagat Raja vs. Union of India and others*, AIR 1967 SC 1606, the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a

A revision and confirming the order of the State Government in the context of Mines and Minerals (Regulation and Development) Act, 1957, and having regard to the provision of Rule 55 of Mineral and Concessions Rules. The Constitution Bench held that in exercising its power of revision under the B aforesaid Rule the Central Government acts in a quasi-judicial capacity (See para 8 page 1610). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this C Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which Central Government upheld the order of the State Government (See para 9 page 1610). Therefore, this Court insisted on reasons being given for the order.

D 23. In *M/s. Mahabir Prasad Santosh Kumar vs. State of U.P and others,* AIR 1970 SC 1302, while dealing with U.P. Sugar Dealers License Order under which the license was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one. This Court further E held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not F a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See para 7 page 1304).

24. In the case of *M/s. Travancore Rayons Ltd. vs. The* G *Union of India and others,* AIR 1971 SC 862, the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excise and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The H

first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (See para 11 page 865-866). A

25. In *M/s. Woolcombers of India Ltd. vs. Woolcombers Workers Union and another,* AIR 1973 SC 2758, this Court while considering an award under Section 11 of Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the Award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (See para 5 page 2761). B C D E

26. In *Union of India vs. Mohan Lal Capoor and others,* AIR 1974 SC 87, this Court while dealing with the question of selection under Indian Administrative Service/Indian Police Service (Appointment by Promotion Regulation) held that the expression "reasons for the proposed supersession" should not be mere rubber stamp reasons. Such reasons must disclose how mind was applied to the subject matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (See para 28 page 98). F G

27. In *Siemens Engineering and Manufacturing Co. of* H

A *India Ltd. vs. The Union of India and another,* AIR 1976 SC 1785, this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order B must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (See para 6 page C 1789).

28. In *Smt. Maneka Gandhi vs. Union of India and Anr.,* AIR 1978 SC 597, which is a decision of great jurisprudence significance in our Constitutional law, Chief Justice Beg, in a concurring but different opinion held that an order impounding D a passport is a quasi-judicial decision (Para 34, page 612). The learned Chief Justice also held when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle E would obviously demand disclosure of reasons for the decision.

29. Justice Y.V. Chandrachud (as His Lordship then was) in a concurring but a separate opinion also held that refusal to disclose reasons for impounding a passport is an exercise of F an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation.

30. The learned Judge further held that law cannot permit any exercise of power by an executive to keep the reasons G undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See para 39 page 613).

31. In *Rama Varma Bharathan Thampuran vs. State of Kerala and Ors.,* AIR 1979 SC 1918, Justice V.R. Krishna Iyer H speaking for a three-Judge Bench held that the functioning of

the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. Learned Judge held that natural justice requires reasons to be written for the conclusions made (See para 14 page 1922).

32. In *Gurdial Singh Fijji vs. State of Punjab and Ors.*, (1979) 2 SCC 368, this Court, dealing with a service matter, relying on the ratio in *Capoor* (supra), held that "rubber-stamp reason" is not enough and virtually quoted the observation in *Capoor* (supra) to the extent that reasons "are the links between the materials on which certain conclusions are based and the actual conclusions." (See para 18 page 377).

33. In a Constitution Bench decision of this Court in *Shri Swamiji of Shri Admar Mutt etc. etc. vs. The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors.*, AIR 1980 SC 1, while giving the majority judgment Chief Justice Y.V. Chandrachud referred to Broom's Legal Maxims (1939 Edition, page 97) where the principle in Latin runs as follows:

"Ces-sante Ratione Legis Cessat Ipsa Lex"

34. The English version of the said principle given by the Chief Justice is that:

> "Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself." (See para 29 page 11)

35. In *M/s. Bombay Oil Industries Pvt. Ltd. vs. Union of India and Others,* AIR 1984 SC 160, this Court held that while disposing of applications under Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order. 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. In saying so, this Court relied on its

previous decisions in *Capoor* (supra) and *Siemens Engineering* (supra), discussed above.

36. In *Ram Chander vs. Union of India and others,* AIR 1986 SC 1173, this Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rule. This Court held that the word "consider" occurring to the Rule 22(2) must mean the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasized that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (Para 4, page 1176).

37. In *M/s. Star Enterprises and others vs. City and Industrial Development Corporation of Maharashtra Ltd. and others,* (1990) 3 SCC 280, a three-Judge Bench of this Court held that in the present day set up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various field of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justification for not doing so (see Para 10, page 284-285).

38. In *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi and others,* (1991) 2 SCC 716, this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on

consideration of the materials on record, should record reasons in support of the conclusion reached (see para 22, pages 738-739) A

39. In the case of *M.L. Jaggi vs. Mahanagar Telephones Nigam Limited and others,* (1996) 3 SCC 119, this Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (see para 8, page 123). B C

40. In *Charan Singh vs. Healing Touch Hospital and others,* AIR 2000 SC 3138, a three-Judge Bench of this Court, dealing with a grievance under CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasizing". (See Para 11, page 3141 of the report) D E F

41. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in the case of *Som Datt Datta vs. Union of India and others,* AIR 1969 SC 414, Mr. Justice Ramaswami delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. The Court held that an order confirming such proceedings does not G H

become illegal if it does not record reasons. (Para 10, page 421-422 of the report).

42. About two decades thereafter, a similar question cropped up before this Court in the case of *S.N. Mukherjee vs. Union of India,* AIR 1990 SC 1984. A unanimous Constitution Bench speaking through Justice S.C. Agrawal confirmed its earlier decision in *Som Datt* (supra) in para 47 at page 2000 of the report and held reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial.

43. It must be remembered in this connection that the Court Martial as a proceeding is *sui generis* in nature and the Court of Court Martial is different, being called a Court of Honour and the proceeding therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of Winthrop in *Military Law and Precedents* are very pertinent and are extracted herein below:

> "Not belonging to the judicial branch of the Government, it follows that courts-martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives."

44. Our Constitution also deals with Court Martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution.

45. In England there was no common law duty of recording of reasons. In *Marta Stefan vs. General Medical Council,* (1999) 1 WLR 1293, it has been held, "the established position of the common law is that there is no general duty imposed on our decision makers to record reasons". It has been

acknowledged in the Justice Report, Administration Under Law (1971) at page 23 that "No 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 their decisions". A

46. Even then in the case of *R vs. Civil Service Appeal Board, ex parte Cunningham* reported in (1991) 4 All ER 310, Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said: B C

> "..It is a corollary of the discretion conferred upon the board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane CJ's observations (in *R vs. Immigration Appeal Tribunal, ex p Khan (Mahmud)* [1983] 2 All ER 420 at 423, (1983) QB 790 at 794-795), the reasons for the lower amount is not obvious. Mr. Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the board were addressing their mind in arriving at their conclusion. It must be obvious to the board that Mr. Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them)". D E F

47. The learned Master of Rolls further clarified by saying:

> "..thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this board to give succinct reasons, if only to put the mind of Mr. Cunningham at rest. I would therefore allow this application." G

48. But, however, the present trend of the law has been H

towards an increasing recognition of the duty of Court to give reasons (See *North Range Shipping Limited vs. Seatrans Shipping Corporation,* (2002) 1 WLR 2397). It has been acknowledged that this trend is consistent with the development towards openness in Government and judicial administration.

49. In *English vs. Emery Reimbold and Strick Limited,* (2002) 1 WLR 2409, it has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in *Cullen vs. Chief Constable of the Royal Ulster Constabulary,* (2003) 1 WLR 1763, Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held, "First, they impose a discipline ... which may contribute to such decisions being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the Courts in performing their supervisory function if judicial review proceedings are launched." (Para 7, page 1769 of the report)

50. The position in the United States has been indicated by this Court in *S.N. Mukherjee* (supra) in paragraph 11 at page 1988 of the judgment. This Court held that in the United States the Courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the Court cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In *S.N. Mukherjee* (supra) this court relied on the decisions of the U.S. Court in *Securities and Exchange Commission vs. Chenery Corporation,* (1942) 87 Law Ed 626 and *John T. Dunlop vs. Walter Bachowski,* (1975) 44 Law Ed 377 in support of its opinion discussed above.

51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative

decisions, if such decisions affect anyone prejudicially. A

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. B

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. C

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. D

f. 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. E

g. Reasons facilitate the process of judicial review by superior Courts. F

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. G

i. Judicial or even quasi-judicial opinions these H

days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non 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. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg

Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and *Anya vs. University of Oxford,* 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

52. For the reasons aforesaid, we set aside the order of the National Consumer Disputes Redressal Commission and remand the matter to the said forum for deciding the matter by passing a reasoned order in the light of the observations made above. Since some time has elapsed, this Court requests the forum to decide the matter as early as possible, preferably within a period of six weeks from the date of service of this order upon it.

53. In so far as the appeal filed by the Bank is concerned, this Court finds that the National Consumer Disputes Redressal Commission in its order dated 4th April 2008 has given some reasons in its finding. The reasons, inter alia, are as under:

"We have gone through the orders of the District Forum and the State Commission, perused the record placed before us and heard the parties at length. The State Commission has rightly confirmed the order of the District Forum after coming to the conclusion that the Petitioner and the Builder – Respondents No.3 and 4 have colluded with each other and hence, directed them to compensate the complainant for the harassment caused to them."

A 54. From the order of the State Commission dated 26.7.07 in connection with the appeal filed by the Bank, we do not find that the State Commission has independently considered Bank's appeal. The State Commission dismissed the Bank's appeal for the reasons given in its order dated 6.7.07 in B connection with the appeal of the builders.

55. This Court is of the view that since the Bank has filed a separate appeal, it has a right to be heard independently in support of its appeal. That right has been denied by the State Commission. In that view of the matter, this Court quashes the C order dated 26.7.07 passed by the State Commission as also the order of the National Commission dated 4th April 2008 which has affirmed the order of the State Commission.

56. This case is remanded to the State Commission for D hearing on merits as early as possible, preferably within a period of six weeks from the date of service of this order to the State Commission.

57. It is expected that the State Commission will hear out the matter independently and give adequate reasons for its E conclusions. We, however, do not make any observations on the merits of the case.

58. Both these appeals are allowed. No order as to costs.

D.G. Appeals allowed.