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SPEAKING ORDER: A THIRD PILLAR OF PRINCIPLE OF NATURAL JUSTICE

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Abstract: A Speaking order means an order speaking for itself and considered the third pillar of natural justice. To put it simply every order must contain reasons. The failure to give reasons could lead to a very justifiable complaint that there was a breach of natural justice. Non- speaking order is illegal and against the principle of natural justice. Speaking order is the order which mentions the reason for arriving a particular decision. It helps in avoiding arbitrariness build up the trust and confidence in the system. Speaking order introduce fairness in the administrative power. It, maintain the right for reason as what is the reason behind any order, which is an indispensable part of a sound judicial system. It is the best practice of the good administration. Faith of the people in administration can be sustained only, if the administrative authority acts fairly and dispose of the matter before them by well, considered orders. The expression consider means not to act mechanically but duly apply its mind and give reasons for decision. The competent authorities are bound to settle the disputes by passing speaking orders. The speaking order does not ipso facto means that they have to be lengthy orders. If the order, may be brief, spell out the reasons as to why it has been [i]passed, then it is a speaking order and it is not necessary that only lengthy order can be said to be a speaking order. The requirement of recording of reasons and communication thereof are considered as an Integral part of the concept of just and fair administrative and judicial procedure and very important facets of natural justice[1].

Keywords: Speaking Order, Arbitrariness, Natural Justice, Administrative Power, Fairness, Judicial Procedure Etc.

Introduction: A speaking order ensure that the principles of natural justice are followed by the authority. To give reasons for the decision is a requirement of the principle of natural. The order would show which particular circumstances received due consideration while arriving at the decision.[2] The expression "speaking order" was first coined by Lord-Chancellor Earl Cairns the expression was used in relation to order with errors on the face of record and such errors were considered to be a "speaking order.[3]orders passed by an administrative authority or quasi-judicial authority affecting the right of the parties "must speak." The supreme court held that appellate court cannot effectively exercise its powers, if reasons are not given in support of the order[4]and it would be difficult for revisional courts to ascertain the grounds on which the orders were passed by the Tribunals[5]or whether the order passed is right or wrong.[6] it is a settled legal proposition that every administrative as well as judicial order must be supported by cogent reasons. Reasons have been held to be sacrosanct to the judicial process. The supreme court has been consistently insisting on this fundamental requirement.[7]

The giving of reasons for decision has been held to be an essential attribute of judicial and judicious disposal of a matter before the courts.[8]It has been said to be an essential requisite of principles of natural justice.[9] Reasons is said to be the heartbeat of every conclusion.[10] The requirement of giving reasons for a decision has been impressed by the courts in a catena of the judgments.[11] Reason, it is said, introduces clarity in an order and without the same, it became life less. Reasons substitute subjectivity by objectivity .Absence of reasons renders indefensible / unsustainable, particularly when the order is subject to further challenge before a higher forum. Thus reasons ensure transparency and fairness in decision making and has been held to be hallmark of article 14.[12] A three judge bench of the Apex court in the **Secretary &Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity**[13]said that the rejection of

[1]N.Lavanya,Cannons of Judicial Ethics, Conduct Character and Integrity (2015)
[2]https://www.taxmann.com
[3](1878-79) Vol.4 Appeal Cases P.30 at 40 of the Report
[4] Harinarayan Sugar Mills Ltd V. Shayam sunder and others, AIR 1961 SC 1669
[5] Bharat Raja v. Union of India and others,AIR 1967 SC 1606(In this case the supreme court expressed the difficulty under Article 136 of the Constitution to ascertain the grounds on which the orders were passed by quasi-judicial body)
[6] M/S. wodoombers of IndiaLtd. V.wodcobers workers union and another, AIR 1973 SC 2758
[7] M/S. Real Estate Agencies v. Government of Goa, AIR 2012 SC 3848
[8] East Coast Railway v. Madhav Appa Rao, AIR 2010 SC 2794
[9] State of Rajasthan v. Sohan Lal, AIR 2004 SC 4520
[10] State of H.P. v.Sada Ram ,(2009) 4SCC 422
[11] Kumar Narender, The Constitutional Law of India 10th Edition,2018 See P.134
[12] AIR 2010 SC 1149
[13] Board of High School & Int.Educ.U.P. v. Ghanshyam Das Gupta, AIR 1963 SC 1110 See also S.N. Mukherjee v. Union of India, AIR 1990 SC 19

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the recommendations, made by an expert committee by the High court without assigning valid and good reasons was illegal. The Expert committee was appointed by the High court to find out possibility of erection of a new building within the same campus of VMH to enhance existing facilities.[14] Mere giving an opportunity of hearing is not enough. Reasons for decision being given is required for two grounds.[15]

- That the aggrieved person gets the opportunity to demonstrate that the reasons are erroneous; and
- Obligation to record reasons operates as an effective determent against possible arbitrary action. The requirement of reasons is to prevent unfairness or arbitrariness in reaching conclusions and reasoned and just conclusion will also have the appearance of justice.In the absence of reasons it would be difficult to know whether the decision is right or wrong.

Object of Speaking Order: Reason is an essential requirement of the rule of Law. It provides a link between fact and decision, guard against non-application of mind arbitrariness, and maintain public confidence in judicial and administrative authorities. Reasons also serve a wider principle that justice must not only be done, it must appear to be done.[16]**In Breen v. Amalgamated Egg. Union case Lord Deenning** Observed that "the giving of reasons is one of the fundamental of good administration." The condition to record reasons introduces clarity and excludes arbitrariness and satisfy the party concerned, against whom the orders passed. 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 and there are all the possibilities of abuse of powers by them. To provide a safeguard against the arbitrary exercise of powers by these authorities. The condition of recording reasons is imposed on them.[17]**In S.N.Mukharjee v. Union of India**[18]In this case the appellant was captain. Appellant after completing the training returned on duty. There are some irregularities in official bills and amounts. But during that irregularity he was not in charge. Appellant was charge sheeted and tried by court martial and punishment of dismissal was awarded. Findings were also confirmed by the army chief though the reasons were not recorded for such confirmations. After that post confirmation petition was also dismissed by central government and HC also dismissed his writ petition. Ultimately, he approaches to the apex court observed that the question under consideration can be divided into two parts:

1. Is there any general principle of law which requires an administrative authority to record the reasons for its decision; and
2. If so, does the said principle apply to an order con-firming the findings and sentence of a court-martial and post-confirmation proceedings under the Act? court observes the 14th report of the law commission of India which says that administrative decision should be accompanied by reasons. **In Harinagar sugar mills v. Shyam Sunder case SC** held that in case where central government exercise judicial powers then that power is subject to the jurisdiction of this court under Art.136 of constitution and it became impossible to exercise power under Art. 136 if government did not give reason in support of decisions.

Need of the Speaking Order: In Ebrahim Mahmood Akhalwaya v. State of Gujarat[19]
case the Gujarat High Court put the following observations and explain the need of speaking order:

- In India the judicial trends has always been to record reasons, even in administrative decisions,if such decisions affect anyone prejudicially.
- A quasi-judicial authority must 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 only be done it must also 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 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, qusi-judicial and even by administrative bodies.
- Reasons facilitate the process of judicial review by superior courts.
- Recording of reasons is a requirement for both judicial accountability and transparency.

14 AIR1971 SC 862
15 AIR 1971 SC 862

16 Dr.Massey I.P. Administrative Law 7th Edition , 2018 See P.233
17Breen v. Amalgamated Egg.Union (1971) I AII ER 1148 (1154): (1971) 2 QB 175: (1971) 2 WLR
18Civil Appeal No.417 1984 , Supreme court of India
19Special civil Application No.8703 of 2014, Gujarat High Court

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- The ongoing judicial trend in all countries committed to the rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision making justifying the principle that reason is soul of justice.
- 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 sine qua non of restraint on abuse of judicial powers.Transparency in decision making not only makes the judge and decision-makers less prone to errors but also makes them subject to broader scrutiny.
- In all common law jurisdiction judgments play a vital role in setting up precedents for the future. Therefore, the development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process."

Judicial Review of Speaking Order

The order passed by an administrative authority can be subject to judicial review by the High court under Article 226 and by the Supreme court under Article 32 of the Constitution.Acting under this provision the courts have the power to quash by certiorari a quasi-judicial order made by any administrative officer and this power of review by the courts can exercised properly only if the administrative officer has passed a speaking order giving the details of facts, reasons, and conclusions. In absence of any such reasons given in the order it will be difficult for the courts to examine the correctness of the order under review. In absence of speaking order the power of judicial review would be insidious and would encourage to arbitrariness and capsize.Only when the administrative authorities are insisted upon and required to pass reasoned and speaking order that they will be subject to judicial scrutiny and correction.[20]

Validity of Speaking Order

On the basis of the following points, we can determine the validity of Speaking order.

1. If the reasons recorded are totally irrelevant, the exercise of power would be bad and the order is liable to be set aside.[21]
2. The validity of the order passed by the statutory authority must be judged by the reasons recorded therein and cannot be construed in the light of subsequent explanation given by the authority concerned or filing affidavait.
3. Where the lower authority does not record reasons for making an order and the appellate authority merely affirms the order without recording reasons,the order passed by the appellate authority is bad.
4. Where the appellate authority reverses the order passed by the lower authority reasons must be recorded, as there is a vital difference between an order of reversal and an order of affirmation.
5. A writ court cannot interfere with order that reasons are inadequate or insufficient.

In Siemens Engg.&Mfg. Co. of India v. Union of India[22] In this case the court held that the rules giving reasons in support of an order is the third principle of natural justice.

Recently the Supreme court in case of Ratan Lal Patel v. Dr. Hari Singh GourVishwavidyalaya[23] observed that while exercising the review jurisdiction, the court has to first satisfy itself on any error apparent on the face of the record which calls for exercise of the review jurisdiction. Merely stating that there is an error apparent on the face of the record is sufficient. It must be demonstrated that in fact there was an error apparent on the face of the record. There must be a speaking and reasoned order as to what was that error apparent on the face of the record, which called for interference and therefore a reasoned order is required to be passed. Unless such reasons are given and unless what was that error apparent on the face of the record is stated and mentioned in the order, the higher forum would not be in a position to know what has weighed with the court while exercising the review jurisdiction and what was that error apparent on the face of the record.

Union of India v. Mohan Lal Capoor & others[24]Disciplinary proceedings and the orders passed therein also require reasons. Non-speaking disciplinary proceedings and non-speaking orders deserve to be quashed. Where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. An order terminating the services of a temporary government servant also requires recording of reasons in support of the order.

[20] Cannons of Judicial Ethics, Conduct, Character and Integrity by N. Lavanya ,2015
[21]Smt.Ujjam Bai v. State of U.P. writ Petition (civil) 79 of 1959,Date of Decision on 28, April 1961
[22] AIR 1976 SC 1785
[23]2022 LiveLaw (SC) 306
[24]AIR(1974) 1 SCR 797

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In Alexander Machinery (Dudley) v. Crabtree[25] case the court held that in the absence of reasons the order becomes lifeless. Reason is the heart beat of every conclusion. Non recording of reasons renders the order to be violative of principles of natural justice. Reasons ensures transparency and fairness in decision making. It enables litigant to know reasons for acceptance or rejection of his prayer. It is statutory requirement of natural justice. Reasons are really linchpin to administration of justice. It is link between the mind of the decision taker and the controversy in question. The failure to give reasons amounts to denial of justice.

Effects of Non-Speaking Orders: The following may be the effects of non-speaking orders.

- When the reasons are not recorded, then there will be no scope for accountability and transparency.
- When the reasons are not mentioned then it will be a possibility of arbitrariness
- There will be scope of corruption and the faith on deciding authority also compromise.
- If the speaking order is not passed in that case the administration of justice will not be able to function independently.
- Whenever the speaking order is not passed in judicial and administrative proceedings, then the parties to the judgment will not be satisfy with decision, which adversely affects the administration of justice.
- In case of non-speaking order, the courts will be having a tedious task to decide any matter. its violate the principle of natural justice.

Conclusion: The administrative authority and courts must pass reasoned and speaking orders in the interest of justice and also to meet expectations of the public and litigant. Recording of reasons in support of the conclusions arrived at in a judgment or order by the courts in our judicial system has been recognized since the very inception of the system. Even in administrative orders, recording of reasoned opinions in favour of the orders passed by the authorities is sine qua non for a proper and justifiable administrative order. While disposing of an application necessarily requires recording of reasons in support of the conclusion arrived at in order irrespective of whether such an order is passed in exercise of judicial or administrative powers vested in the court or authority and failure to give reasons amounts to denial of justice. Reasons in support of the conclusion arrived at by the court or the authority in the order can be equated to heartbeats of every conclusion and without the same it becomes lifeless as expressed by Apex court in the various landmark judgments. The recorded reasons are subject to judicial scrutiny. As against the arbitrary exercise of power by the adjudicating authority, this doctrine stands as an important safeguard. If the reasons recorded in support of the conclusion reached are found to be unclear or irrelevant or incorrect, such order passed by the authority may be set aside. Hence, the reasons recorded must not just be read in letter and spirit but also must be clear, explicit, and intelligible in order to show that they have considered the material facts and other relevant facts before coming to the conclusion.

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[25](1974) ICR 120, (1974) IRLR 56