

A

MMRDA OFFICERS ASSOCIATION,  
KEDARNATH RAO GHORPADE

v.

MUMBAI METROPOLITAN REGIONAL  
DEVELOPMENT AUTHORITY AND ANR.

B

DECEMBER 10, 2004

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

*Constitution of India, 1950 :*

C

*Article 226—Writ petition involving eligibility for appointment as Chief, Town and planning Division—Disposed of by High Court by a non-speaking and non-reasoned order—Held, one of the salutary requirements of natural justice is spelling out reasons for the order made—A non-speaking order renders it virtually impossible for court to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision—On facts, the writ petition involved disputed issues regarding eligibility—The manner in which the High Court disposed of the writ petition shows that the basic requirement of indicating reasons was not kept in view—Order of High Court set aside and matter remitted to it for fresh consideration and disposal by a speaking order—Administrative law—Principles of natural justice—None-speaking order.*

D

E

*Chairman and managing Director, United Commercial Bank and Ors. v. P.C. Kakkar, [2003] 4 SCC 364, relied on.*

F

*Breen v. Amalgamated Engg. Union, [1971] 1 All ER 1148 and Alexander Machinery (Dudley) Ltd. v. Crabirees, (1974) ICR 120 NIRC, referred to.*

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8260 of 2004.

From the Judgment and Order dated 27.8.2004 of the Bombay High Court in W.P. No. (Lodging) 2205 of 2004.

H

Arun Jaitley and Navin Chawla for the Appellants.

R.F. Nariman, A.S. Bhasme and Sunil Kumar Jain for the Respondents. A

The Order of the Court was delivered by

**ARIJIT PASAYAT, J.** : Head learned counsel for the parties.

Leave granted. B

Though many points were urged in support of the appeal relating to the eligibility of respondent No. 2 to be appointed as Chief, Town and Planning Division, we do not think it necessary to go into this aspect in detail. While issuing notice on 8.10.2004, it was indicated that the impugned order of the High Court being practically non-speaking and non-reasoned, the matter required to be set aside and remitted to the High Court for fresh consideration and disposal by a speaking order. Mr. Arun Jaitley, learned Senior counsel appearing for appellant submitted that the High Court did not even indicate reasons as to why the respondent No. 2 was held to be eligible and/or to have fulfilled the eligibility criteria. In response Mr. R.F. Nariman, learned Senior Counsel appearing for respondent No. 1 submitted that respondent No. 2 clearly fulfilled eligibility criteria and made reference to various documents in the counter affidavit filed before the High Court and in this Court in this regard. C D E

We find that the writ petition involved disputed issues regarding eligibility. The manner in which the High Court has disposed of the writ petition shows that the basic requirement of indicating reasons was not kept in view and is a classic case of non-application of mind. This Court in several cases has indicated the necessity for recording reason. F

Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union observed*, [1971] 1 ALL E.R. 1148 "The giving of reasons in one of fundamental of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree*, [1974] ICR 120 NIRC it was observed : "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate G H

A function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The “inscrutable face of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance. *Chairman and Managing Director, United Commercial Bank & Ors. v. P.C. Kakkar*, [2003] 4 SCC 364.

C One of the main points raised by Mr. R.F. Nariman, learned Senior Council is that since respondent No. 2 had obtained degree in Master of Planning with specialization in Housing, she fulfilled the requisite qualification. This basic question was not even discussed by the High Court, though there was dispute as regards the acceptability of such a stand.

D Therefore, without expressing any opinion on the merits of the case, we remit the matter to the High Court for fresh consideration on merits. It goes without saying that the High Court shall pass a speaking order recording reasons in support of its conclusions.

E It is pointed out by Mr. Nariman, learned Senior Counsel that on 28th September, 2004 respondent No. 2 has assumed office after resigning from her earlier office. In the fitness of things, therefore, till fresh decision is taken, she shall be permitted to continue. It is, however, made clear that by granting this interim protection we have not expressed any opinion on the merits of the case.

F The appeal is accordingly disposed of.

R.P.

Appeal disposed of.