AFR

Court No. - 28

Case :- WRIT - C No. - 1545 of 2017

Petitioner :- Buddhraj
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Neeru Devi,Tej Prakash,Yatindra Kumar Srivastava
Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

1. Heard Sri Rashtrapati Khare holding brief of Sri Neeru Srivastava, learned counsel for the petitioner and the learned standing counsel for the State-respondents.

2. On 13.01.2017, the matter was heard and the following order was passed;

> "Heard learned counsel for the petitioner and learned Standing Counsel for respondent nos. 1 to 4.
> Prima-facie the impugned order passed by the respondent no. 3 is unreasoned and non speaking. Prima-facie the impugned order indicates failure of the respondent no. 3 to discharge his duty.
> **Put up on 17.01.2017**, on which date the respondent no. 3 shall remain personally present and file his personal affidavit explaining the circumstances and reasons for passing the impugned non speaking order despite specific order dated 16.11.2016 passed by this Court in Writ-C No. 54337 of 2016 directing him to consider the complaint of the petitioner along with supporting material while deciding the matter of cancellation of his fair price shop agreement of Village Panchayat Akbarpur Itorura, Vikas Khand Haswa, Tehsil and District Fatehpur."

3. By the impugned order dated 15.12.2016, the fair price shop agreement of respondent no.5 has been restored observing as under;

> "विक्रेता द्वारा प्रस्तुत स्पष्टीकरण का परीक्षण गुण–दोष के आधार पर किया गया। प्रस्तुत स्पष्टीकरण पूर्णतया संतोषजनक नहीं है, चूँकि विक्रेता विकलांग व्यक्ति है एवं उसकी यह प्रथम त्रुटि है। अतः विक्रेता के प्रति मानवीय दृष्टिकोण अपनाते हुए शासन के पक्ष में रू0 5000 (पांच हजार रू0) प्रतिभूति जब्त करते हुए निलम्बित अनुबन्ध पत्र बहाल किया जाता है व विक्रेता को निर्देशित किया जाता है कि वह नियमानुसार उठान/वितरण सुनिश्चित करे।"

4. A personal affidavit of respondent no.3, namely, Abhinav Ranjan Srivastava, Sub Divisional Magistrate, Tehsil Sadar, District Fatehpur, has been filed today which is taken on record. The aforesaid, respondent no.3 is also personally present in this Court and has tendered unconditional apology for the manner in which the impugned order has been passed. Learned standing counsel states that the respondent no.3 has entered in service about ten months ago and as such due to lack of experience, the mistake occurred in not recording the reasons in the impugned order and therefore, he may be excused.

5. In the case of **Omar Salay Mohd. Sait Vs. Commissioner of Income Tax, Madras, AIR 1959 SC 1238**, Hon'ble Supreme Court held in para 42 as under:

> "42. We are aware that the Income-tax Appellate Tribunal is a fact finding Tribunal

and if it arrives at its own conclusions of fact after due consideration of the evidence before it this court will not interfere. **It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it.** The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. **On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this court.**"

(Emphasis supplied by me)

6. In the case of **Udhav Das Kewat Ram Vs. CIT 1967 (66) ITR 462,** Hon'ble Supreme Court held that Tribunal must consider with due care all material facts and record its findings on all contentions raised before it and the relevant law.

7. An order without valid reasons cannot be sustained. To give reasons is the rule of natural justice. Highlighting this rule, Hon'ble Supreme Court held in the case of **The Secretary & Curator, Victoria Memorial v. Howrah Ganatantrik Nagrik Samity and ors., JT 2010(2)SC 566 para 31 to 33** as under :

"**31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind. " [Vide State of Orissa Vs. Dhaniram Luhar (JT 2004(2) SC 172 and State of Rajasthan Vs. Sohan Lal & Ors. JT 2004 (5) SCC 338:2004 (5) SCC 573].**

32. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Faij Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs.

> **Sada Ram & Anr. (2009) 4 SCC 422].**
> **33.**Thus, it is evident that the **recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making.** The person who is adversely affected may know, as why his application has been rejected.
>
> (Emphasis supplied by me)

8. Non recording of reasons, non consideration of admissible evidence or consideration of inadmissible evidence renders the order to be unsustainable. Hon'ble Supreme Court in the case of **Chandana Impex Pvt. Ltd. Vs. Commissioner of Customs, New Delhi , 2011(269)E.L.T. 433 (S.C.)(para 8)** held as under :

> "8. Having bestowed our anxious consideration on the facts at hand, we are of the opinion that there is some merit in the submission of learned counsel for the appellant that while dealing with an appeal under Section 130 of the Act, the High Court should have examined each question formulated in the appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and given its reasons for holding that question is not a substantial question of law. **It needs to be emphasised that every litigant, who approaches the court for relief is entitled to know the reason for acceptance or rejection of his prayer, particularly when either of the parties to the lis has a right of further appeal. Unless the litigant is made aware of the reasons which weighed with the court in denying him the relief prayed for, the remedy of appeal will not be meaningful. It is that reasoning, which can be subjected to examination at the higher forums**. In State of Orissa Vs. Dhaniram Luhar2 this Court, while reiterating that reason is the heart beat of every conclusion and without the same, it becomes lifeless, observed thus :
>
> "8.....Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. 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;....."
>
> (Emphasis supplied by me)

9. In the case of **CCT Vs. Shukla & Bros. (2010) 4 SCC 785** (paras 20, 24 to 27) Hon'ble Supreme Court held as under:

> "20. A Bench of Bombay High Court in the case of M/s. Pipe Arts India (P) Ltd. V. Gangadhar Nathuji Golamare (2008)6 Mah LJ 280, wherein the Bench was concerned with an appeal against an order, where prayer for an interim relief was rejected without stating any reasons in a writ petition challenging the order of the Labour Court noticed, that legality, propriety and correctness of the order was challenged on the ground that no reason was recorded by the learned Single Judge while rejecting the prayer and this has seriously prejudiced the interest of justice. After a detailed discussion on the subject, the Court held: (Mah LJ pp.283-87, paras 8,10 & 12-22)
> "8. The Supreme Court and different High Courts have taken the view that i**t is always desirable to record reasons in support of the Government actions whether administrative or quasi-judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law**. These concepts would require that any order, particularly, the order which can be subject-matter of judicial review, is reasoned one. Even in the case of Chabungbambohal Singh v. Union of India 1995 Suppl (2) SCC 83, the Court held as under: (SCC pp. 85-86,

para 8)
'8. ...His assessment was, however, recorded as "very good" whereas qua the appellant it had been stated "unfit". As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated "unfit", and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made."

10. In **Jawahar Lal Singh v. Naresh Singh (1987) 2 SCC 222**, accepting the plea that absence of examination of reasons by the High Court on the basis of which the trial Court discarded prosecution evidence and recorded the finding of an acquittal in favour of all the accused was not appropriate, the Supreme Court held that the order should record reasons. **Recording of proper reasons would be essential, so that the Appellate Court would have advantage of considering the considered opinion of the High Court on the reasons which had weighed with the trial Court.**

In State of Punjab and Ors. v. Surinder Kumar (1992) 1 SCC 489, while noticing the jurisdictional distinction between Article 142 and Article 226 of the Constitution of India, the Supreme Court stated that powers of the Supreme Court under Article 142 are much wider and the Supreme Court would pass orders to do complete justice. The Supreme Court further reiterated the principle with approval that the High Court has the jurisdiction to dismiss petitions or criminal revisions in limine or grant leave asked for by the petitioner but for adequate reasons which should be recorded in the order. The High Court may not pass cryptic order in relation to regularisation of service of the respondents in view of certain directions passed by the Supreme Court under Article 142 of the Constitution of India. Absence of reasoning did not find favour with the Supreme Court. The Supreme Court also stated the principle that powers of the High Court were circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the basis of whims or subjective opinion varying from Judge to Judge.

13. In Hindustan Times Ltd. v. Union of India (1998) 2 SCC 242, the Supreme Court while dealing with the cases under the Labour Laws and Employees' Provident Funds and Miscellaneous Provisions Act, 1952 observed that even when the petition under Article 226 is dismissed in limini, it is expected of the High Court to pass a speaking order, may be briefly.

(emphasis supplied)

14. Consistent with the view expressed by the Supreme Court in the aforereferred cases, in State of U.P. v. Battan and Ors.(2001) 10 SCC 607, the Supreme Court held as under:(SCC p.608, para 4)
'4.The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. ...The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the High Court order not sustainable."

15. Similar view was also taken by the Supreme Court in the case of Raj Kishore Jha v. State of Bihar and Ors. JT 2003 Supp(2) SC 354.

16. In a very recent judgment, the Supreme Court in State of Orissa v. Dhaniram Luhar (2004) 5 SCC 568 while dealing with the criminal appeal, insisted that the reasons in support of the decision was a cardinal principle and the High Court should record its reasons while disposing of the matter. The Court held as under: (SDC p. 572, para 8)

'8. Even in respect of administrative orders **Lord Denning, M.R. In Breen v. Amalgamated Engg. Union, (1971)2 QB 175, observed:(QB p.191 C)**

"The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree 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 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; reasons at least sufficient to indicate an application of mind to the matter before Court. 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 the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

17. Following this very view, the Supreme Court in another very recent judgment delivered on 22-2-2008, in State of Rajasthan v. Rajendra Prasad Jain, (2008)15 SSC 711 stated that 'reason is the heartbeat of every conclusion, and without the same it becomes lifeless.'

18. **Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request**. Either of the parties to the lis has a right of appeal and, therefore, it is essential for them to know the considered opinion of the Court to make the remedy of appeal meaningful. **It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only desirable but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be.** Brevity in reasoning cannot be understood in legal parlance as absence of reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the Courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. **Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion. Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the Article,** "The problem with the Courts: Black-robed Bureaucracy Or Collegiality Under Challenge" 42 Md.L. Rev. 766, 782 (1983), **observed as under:-**

'My own guiding principle is that virtually every appellate decision requires some statement of reasons. The discipline of writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the Court that a bare signal of affirmance, dismissal, or reversal does not.'

19. **The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to**

know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation. Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:-

'**When reasons are announced and can be weighed, the public can have assurance that the correcting process is working**. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. **An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles**. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid.'

20. The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinized by the Appellate Court. The reasons indicated by the Court could be accepted by the Appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on 13-9-2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said, 'The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written: -
(1) to clarify your own thoughts;
(2) to explain your decision to the parties;
(3) to communicate the reasons for the decision to the public; and (4) to provide reasons for an appeal Court to consider.'

22. Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120 (NIRC), the Court went to the extent of observing that 'Failure to give reasons amounts to denial of justice'. Reasons are really linchpin to administration of justice. They are the link between the mind of the decision-taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher courts but is even of great utility for providing public understanding of law and imposing self- discipline in the Judge as their discretion is controlled by well-established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question

substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award. The Court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various contentions were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals."

24. **Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law.** Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the Courts to record reasons.

26.Our procedural law and the established practice, in fact, imposes unqualified obligation upon the Courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that, the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order 14 Rule 2 read with Order 20 Rule 1 of the Code of Civil Procedure requires that, the Court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the Court.

27. **By practice adopted in all Courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision.** In Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120(NIRC), there are apt observations in this regard to say "failure to give reasons amounts to denial of justice". Reasons are the real live links to the administration of justice. With respect we will contribute to this view. **There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove.**"

(Emphasis supplied by me)

10. A fact finding authority is under statutory obligation to consider with due care every fact for and against the petitioner and to record its finding in a manner which would clearly indicate as to whether the facts on which the order was passed have been established? Absence of the findings to disclose reasons in an order in the manner indicated above would render the order to be indefensible/unsustainable.

11. Reason is the heart beat of every conclusion. In the absence of reasons the order becomes lifeless. 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. Thus failure to give reasons amounts to denial of justice.

12. The respondent no.3 has completely failed to carry out the directions given by this Court in the order dated 16.11.2016 in Writ C No.54337 of 2016 as under;

> “Petitioner is a card holder of fair price shop of Akbarpur, Itroura, Vikas Khand Haswa, Tehsil and District Fatehpur.
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> The licence of fair price shop of fifth respondent, Rakesh Kumar was suspended on 19 September 2016, however, the grievance of the petitioner is that a large number of fake persons have been enrolled, who are non-existent, therefore, syphoning of food grain distributed which is against the public distribution system. The petitioner has made several complaint to the third respondent, Sub-District Magistrate, Civil Supplies, Fatehpur, but till date no decision has been taken.
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> Learned Standing Counsel would submit that the grievance of the petitioner shall be looked into in pending proceedings.
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> In regard thereto, the writ petition is finally disposed of with the following directions:
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> "The third respondent, Sub-District Magistrate, Civil Supplies, Fatehpur, shall consider the complaint of the petitioner along with supporting material while deciding the proceedings pending against the fifth respondent, Rakesh Kumar regarding cancellation of his license of fair price shop, the petitioner shall file his objection along with a certified copy of this order by supplying the material.
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> No costs. ”

13. In view of the aforesaid, since no valid reasons have been recorded for the conclusion reached in the impugned order dated 15.12.2016 and as such it can not be sustained and, is therefore, quashed. The writ petition is **allowed**. Matter is remitted back to the respondent no.3 to pass an order afresh in accordance with law in the light of the directions given in the order 16.11.2016 in Writ C No.54337 of 2016. The order shall be passed by the respondent no.3 expeditiously, preferably within two months from today after affording reasonable opportunities of hearing to the parties concerned and

without granting any unnecessary adjournment.

14. Personal appearance of aforesaid, Sri Abhinav Ranjan Srivastava is exempted.

Order Date :- 17.1.2017
V Kumar