

## SPEAKING ORDER : A CRITICAL STUDY IN THE LIGHT OF SUPREME COURT'S DECISION IN KRANTI ASSOCIATES PRIVATE LTD. CASE\*

By

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(1) Whether the Quasi-Judicial bodies are required to record reasons in support of their decisions have been considered in the case under study? This question came up for consideration when the National Consumer Redressal Commission<sup>1</sup> gave its decision without reasons.

(2) The jurisdiction of the National Commission is provided in Section 21 of the Consumer Protection Act. The powers and procedure to be followed is provided in Section 22 of the Consumer Protection Act. Section 21(1)(b) of the Consumer's Protection Act provided for the National Commission's revisional powers over the orders of the State Commission. The decision-making process of the National Commission is provided by Sections 12, 13 and 14 of the Consumer Protection Act. By virtue of the Sections 13(4), (5), (6) and (7) the National Commission is vested with the powers of Civil Court and in particular it has been vested with the powers of a Civil Court under the Code of Civil Procedure, 1908. The proceedings before the National Commission are treated as judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and for the purposes of Section 195 of the Indian Penal Code, National Commission is deemed to be a 'Civil Court'. No doubt it is a quasi-judicial of the highest level in the hierarchy of

consumer Tribunals set up under the Consumer Protection Act to decide consumer disputes.

(3) The necessity for quasi-judicial Tribunals to give reasons for their decision came up in several cases. Initially, a distinction was made between an 'administrative order' and 'quasi-judicial<sup>2</sup> order' which virtually reached a vanishing point.

(4) The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns. This expression was used in relation to order with errors on the face of record and such errors were considered to be a "speaking order"<sup>3</sup>. 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<sup>4</sup> and it would be difficult for revisional Courts to ascertain the grounds on which the orders were passed by the Tribunals<sup>5</sup> or whether the order passed is right or wrong<sup>6</sup>.

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\* SLPs Civil Appeal No.20428 of 2007 and 12766 of 2008 decided on 8.9.2010 reported in 2011 CPJ P.133 (SC)(CP) in the case *Kranti Associates Private Ltd., and another v. Masood Ahmed Khan and others*.

1. Hereinafter referred to as National Commission

2. *A.K. Kraipak and others v. Union of India and others*, AIR 1970 SC P.158

3. (1878-79) Vol.4 Appeal cases P.30 at 40 of the Report

4. *Harinarayan Sugar Mills Ltd v. Shyam Sunder and others*, AIR 1961 SC P.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. Woolcombers of India Ltd. v. Wool Combers Workers Union and another*, AIR 1973 SC P.2758.

(5) The Supreme Court in *Kranti Associate Private Ltd.* case<sup>7</sup>, summarized and laid down the following principles relating to ‘speaking order’.

- (i) Recording of reasons in support of a decision ensures that the decision is not a result of Caprice, whim or fancy but a decision arrived at is just and based on consideration of the relevant law<sup>8</sup>;
- (ii) When the order passed is subject to appeal, then the necessity to record reasons is even greater<sup>9</sup>;
- (iii) Mere giving an opportunity of hearing is not enough;
- (iv) Reasons for decision being given is required for two grounds<sup>10</sup>:
  - (a) That the aggrieved person gets the opportunity to demonstrate that the reasons are erroneous; and
  - (b) Obligation to record reasons operates as an effective deterrent against possible arbitrary action. The requirement of reasons is to prevent unfairness or arbitrariness in reaching conclusions and reasoned and just conclusions 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.
- (v) Reasons should not be a mere ‘rubber stamp reasons’ and they must disclose<sup>11</sup>.

(a) How the mind was applied to the subject-matter for a decision (irrespective of the fact that it is purely administrative or quasi-judicial);

(b) The link between materials which are considered and the conclusions which are reached and it should provide a national nexus between the two;

(vi) Requirement of ‘reasons’ in support of the order is as basic as the adherence to the principles of natural justice<sup>12</sup>.

Principles of natural justice provides that it must be observed in proper spirit and a mere pretence of compliance would not satisfy the requirements of law.

(vii) When an action taken deprives or restricts fundamental right, the authorities must see that justice is not only done but manifestly appears to be done as well as this mandates the disclosures of reasons for the decision<sup>13</sup>

(viii) Refusal to give reasons is an exercise of an exceptional nature and to be done sparingly and it should be fully justified by the exigencies of an uncommon situation<sup>14</sup>. It should not be a mere motive to keep the reason away from judicial scrutiny<sup>15</sup>.

(ix) As observed by Justice *Krishna Iyer*, ‘natural justice requires reasons to be written for the conclusions reached’<sup>16</sup>

7. *Supra*

8. *Mahavir Prasad Santosh Kumar v. State of U.P. and others*, AIR 1970 SC P.1302

9. *Ibid*

10. *M/s. Travancore Rayons Ltd. v. Union of India and others*, AIR 1971 SC P.862 (Para 11 of P.865-866)

11. *Union of India v. Mohan Lal Capoor and others*, AIR 1974 SC P.87 (Para 28 at Page 98); *Gurudial Singh Fijji v. State of Punjab*, (1978) 2 SCC P.368, Para 18 P.377.

12. *Seimens Engineering and Manufacturing Co. of India Ltd. v. Union of India and others*, AIR 1976 SC P.1785 Para 6 Page 1789.

13. *Smt. Menaka Gandbi v. Union of India and others*, AIR 1978 SC P.597 Para 34 Page 312.

14. *Ibid*. See observation of Justice *Chandrabud*

15. *Ibid* – P.613

16. *Per Krishna Iyer, J., in Rama Varma Bharathan Thampuram v. State of Kerala and others*, AIR 1979 SC P.1918 Para 14 Page 1922

- (x) Reasons being given for the principle enunciated in *Ces-santa Ratione Legis cessat ipsm Lex* (Reason for any particular law ceases, so does the law itself) and reason is considered as the soul of the law<sup>17</sup>.
- (xi) Faith of the people in administrative Tribunals can be sustained only, if the Tribunal acts fairly and dispose of the matter before them by well-considered orders<sup>18</sup>.
- (xii) The expression 'consider' means not to act mechanically but duly apply its mind and give reasons for the decision<sup>19</sup>.
- (xiii) Disclosure of reasons provide for an opportunity for an objective review both by superior administrative heads and for judicial process<sup>20</sup>.
- (xiv) Distinction has to be made between facts which are not in dispute and disputed facts. In the former case, non-recording of reasons may not violate the principles of natural justice but in the latter case, it would be a violation of natural justice<sup>21</sup>.
- (xv) Mandatory for reasons to be given in the award affecting public interest as it would facilitate the High Courts to review the validity of the award<sup>22</sup>.
- (xvi) Statutes like the Consumer Protection Act which is a benevolent piece of legislation intended to protect large body of consumers from exploitation and for consumer justice by summary trials must give conclusions based on reasons<sup>23</sup>.
- (xvii) In Court-martial cases, the Supreme Court held<sup>24</sup>:
  - (i) They do not belong to the judicial branch of the Government
  - (ii) Court-martial are sui generis in nature and are dealt with differently by the Constitution itself.
- (6) Thus, it is not necessary in such cases to record reasons by the authorities.
- (xviii) Even in cases<sup>25</sup> where the Courts act in their discretion, there is a very strong reason in favour of disclosing of reasons. There is now increasing recognition towards the duty of the Court to give reasons in U.K.
- (xix) Unless the parties become aware of the reasons as to why one has won and the others has lost, justice will not be done<sup>26</sup>.
- (xx) Decisions being supported by reasons imposes discipline contributing to the decisions being considered with care, the decisions rendered encourages transparency, and helps the Courts in

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17. Broom's legal maximus (1939 Edition P.97) quoted in *Swamiji of Shri Admar Mutt v. Commissioner for Hindu Religious and Charitable Endowments Dept. and others*, AIR 1980 SC P.1 Para 29, Page 11.

18. *M/s. Bombay Oil Industries Pvt. Ltd. v. Union of India and others*, AIR 1984 SC P.160.

19. *Ramchander v. Union of India and others*, AIR 1986 SC P.1173, Para 4, Page 1176

20. *M/s. Star Enterprises and others v. City and Industrial Development Corporation of Maharashtra Ltd. and others*, (1990) 3 SCC p.286 Para 10, Pages 284 and 285.

21. *Maharashtra State Board of Secondary & Higher Secondary Education v. K.S. Gandbi and others*, (1991) 2 SCC P.716 Para 22, Page 738-739.

22. *M.L. Jaggi v. Mabangar Telephone Nigam Ltd. and others*, (1996) 3 SCC P.119.

23. *Charan Singh v. Healing Touch Hospitals and others*, AIR 2000 SC p.3138, Para 11 Page 3141.

24. *S.N. Mukherjee v. Union of India*, AIR 1990 SC P.1984, See also Article 33, 136(2) and 227(4) of the Constitution of India.

25. Per Lord Donaldson, Master of Rolls in *R v. Civil Service Appeal Board Ex parte Cunningham*, (1991) 4 All ER P.310. This decision is very important for the reason that English law does not impose an obligation on public authorities to give reasons for the decision. (See for details Justice Report, 'Administration under Law (1971) P.23

26. In *English v. Emery Reimbold and Strick Ltd.*, (2002) 1 WLR P.2409.

performing their supervisory function and judicial review proceedings<sup>27</sup> and

- (xxi) Considerations underlying the actions under review need a thorough scrutiny of the recorded reasons<sup>28</sup> and also set up precedents for future adjudications.

(7) The ratio in *Kranthi Associates Private Ltd.*, case and the guidelines serve as a

reference for all administrative and judicial (including quasi-judicial authorities) to exercise their powers of decision-making judiciously – judicial application of mind and the decisions rendered may receive public appreciation. It is suggested that the copy of the judgment may be circulated to all decision-making authorities which may ultimately contribute to transparency in all spheres of administration.

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**WHETHER DECISION OF A.P. HIGH COURT IN GUNAPATI RADHA KRISHNA REDDY V. CHEEMALA VENKATA RAMANA IN CRP NO.327 OF 2010 (REPORTED IN 2010 (3) ALD 721) UNDER SECTION 9 OF INSOLVENCY ACT IS CORRECT IN VIEW OF THE DECISION OF SUPREME COURT IN STATE OF PUNJAB V. RATTAN SINGH, IN CIVIL APPEAL NO.6/ 1962 (REPORTED IN AIR 1964 SC 1223) ?**

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(1) The point for consideration is “whether a creditor, who has not obtained a decree against a debtor or in case wherein the debtor has not made unequivocal admission of his debt in favour of the creditor, can file petition under Section 9 of Provincial Insolvency Act, to adjudge the debtor as insolvent ?

(2)(a) It was held in Para 6 of judgment in 2010 (3) ALD 721 “that before the creditor invokes the jurisdiction of the insolvency Court, there must exist the adjudication of the debt or debts against the proposed insolvent in his favour. That can be done in the form of a decree passed by the competent Court of civil jurisdiction

or an unequivocal declaration on the part of the proposed insolvent, before the proceedings are initiated. To put it differently, a creditor cannot institute proceedings under Section 9 of the Act in the absence of any adjudication, as to the debts, or unequivocal admission thereof, by a person, proposed to be declared as insolvent” (Underling is mine).

(2)(b) The facts in that decision are that creditor has not filed suits on the promissory notes executed by the debtor in his favour. The debtor pleaded that the said promissory notes are not supported by consideration.

(2)(c) In view of those facts, it was held in Para 7 of that judgment “In a way the petitioner wanted to establish his claim under the promissory notes in the I.P. itself. Such a course is totally impermissible in law.”

27. *Cullen v. Chief Constable of the Royal Ulster Constabulary*, (2003) 1 WLR P.1763 Para 7 and Page 1769.

28. *John T. Dunlop v. Walter BNachowki*, (1975) 44 Law Ed. P.377.