

Necessity Of Passing Speaking & Reasoned Orders

.... *S.S. Upadhyay*
*Former District & Sessions Judge/
Former Legal Advisor to Governor
UP, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com*

S U B – T O P I C S

1. Rationale behind passing reasoned orders	8. Summoning order by Magistrate must be reasoned
2. Revisional orders to be speaking	9. Order disposing of application u/s. 156(3) Cr.P.C. requires recording of reasons
3. Appellate orders to be reasoned	10. Disposal of election petitions
4. Judgments must be reasoned	11. Public auction proceedings
5. Bail orders must be speaking	12. Administrative Orders to be reasoned
6. Order granting or refusing leave to file appeal to be reasoned	13. Quasi-judicial proceedings
7. Orders condoning delay, limitation or laches must be reasoned	14. Disciplinary proceedings

1. Rationale behind passing reasoned orders : 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. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed

judicially. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of **Andhra Bank v. Official Liquidator, 2005 (3) SCJ 762**. For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the Apex Court in the matter of **Union of India v. Essel Mining & Industries Ltd., (2005) 6 SCC 675**.

2. **Revisional Orders to be speaking** : Where the legal words and phraseology like illegality, impropriety or jurisdictional error used in Sec. 397 Cr.P.C. were merely repeated in the revisional order by the Addl. Sessions Judge without any mention of the facts of an application moved U/s. 156(3) of the Cr.P.C. before the Magistrate, the Supreme Court deprecated the ASJ concerned by holding that such a non-speaking revisional order does not fulfill the requirements of a decision arrived at judicially. An opinion expressed or conclusion arrived at in an order or judgment by the courts without recording reasons has always been declared as illegal and unjustifiable by the Hon'ble Supreme Court and such practices have not only been deprecated over the years but such sort of orders have been judicially de-recognized. See----

1. **Jagtamba Devi vs. Hem Ram & others, 2008 Cri.L.J. 1623 (SC).**
2. **Ran Singh vs. State of Haryana, (2008) 2 SCC (Cri.) 182.**
3. **Yogendra Singh vs. State of U.P., 2003(46) ACC 1008 (All.)**
4. **Paul George v. State, 2002 SCC (Cri) 340**

3. **Appellate Orders to be reasoned** : Recording of reasons are essential in every judicial decision. The grounds taken in an appeal must be dealt with by the appellate court and reasons must be recorded in support of accepting or dismissing the appeal. An appeal cannot be disposed of by non-speaking order.

The Supreme Court deprecated the practice where a criminal appeal was disposed of by appointing an Advocate as amicus curiae the same day by one sentence cryptic order saying “heard, dismissed, reasons to follow”. See-----

1. **Mangat Ram vs. State of Haryana, 2008 (62) ACC 850 (SC)**
2. **Shishu Pal Singh vs. Government of India, 2003 (50) ALR 230 (All)**

4. **Judgment must be reasoned** : The Supreme Court has clarified that the judgments delivered by courts must be speaking and reasoned. For a qualitative judgment, It is the sufficiency of reasons recorded in support of the conclusions or findings arrived at by the court that matters and not the number of pages in the judgment. See--- **Union of India vs. Essel Mining & Industries Ltd., (2005) 6 SCC 675.**
5. **Bail orders must be speaking** : Discretionary jurisdiction of courts u/s. 437 & 439 Cr.P.C. should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must also indicate brief reasons for granting or refusing bail. See----
1. **Kumari Suman Pandey vs. State of U.P., (2008) 1 SCC (Criminal) 394.**
2. **Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav, 2005 (51) ACC 727 (SC).**
3. **State of Maharashtra vs. Sitaram Popat Vetal, (2004) 7 SCC 521.**
4. **Mansab Ali vs. Irsan and another, (2003) 1 SCC 632.**
5. **Puran vs. Ram Bilas, (2001) 6 SCC 338.**

In the matter of **Afzal Khan vs. State of Gujarat, AIR 2007 SC 2111**, it has been held by the Supreme Court that a bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

6. **Order granting or refusing leave to file appeal to be reasoned** : The Supreme Court has ruled that while granting or refusing leave u/s. 378(3) or u/s. 378(4) of the Cr.P.C. to file an appeal, the order disposing of the application must be reasoned as giving of reasons in support of orders passed by the courts is a salutary requirement of the rules of natural justice. See----

1. **M/s. Goyal Enterprises vs. State of Jharkhand, 2008 Cri.L.J. 1923 (SC).**
2. **State of H.P. vs. Paras Ram & others, 2008 Cri.L.J. 1026 (SC).**
3. **State of Rajasthan vs. Rohitas and others, 2008 (61) ACC 678 (SC).**
4. **State of Orissa vs. Dhaniram Luhar, (2008)2 SCC (Cri.) 49.**
5. **State of Rajasthan vs. Sohan Lal, (2008) 2 SCC (Cri.) 53.**
6. **State of H.P. vs. Sardara Singh, 2008 (63) ACC 145 (SC)**
7. **State of U.P. vs. Battan and others, (2001) 10 SCC 607.**
8. **Jawahar Lal Singh vs. Naresh Singh and others, (1987)2 SCC 222.**
9. **State of Maharashtra vs. Vithal Rao Pritirao Chawan, AIR 1982 SC 1215.**

7. **Orders condoning delay, limitation or laches must be reasoned** : The Supreme Court has laid down that while condoning delay, limitation or laches in moving an application etc., the order passed by the court must be reasoned and must reflect the application of mind. See----- **Cyril Lasrado v. Juliana Maria Lasrado, (2004) 7 SCC 431.**

8. **Summoning order by Magistrate must be reasoned** :

(A) Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary

in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. See--- **Pepsi Foods Ltd. vs. Special Judicial Magistrate, 1998 SCC (Criminal) 1400.**

(B) Filling in blanks & passing mechanical & cryptic summoning order deprecated--- Whenever any police report or complaint is filed before the magistrate, he has to apply his mind to the facts stated in the report or complaint before taking cognizance. If after applying his mind to the facts of the case, the magistrate come to the conclusion that there is sufficient material to proceed with the matter, he may take cognizance. Judicial orders cannot be allowed to be passed in a mechanical manner either by filling in blank on a printed proforma or by affixing a ready made seal etc. of the order on a plain paper. Such tendency must be deprecated and cannot be allowed to perpetuate. This reflects not only lack of application of mind to the facts of the case but is also against the settled judicial norms. Therefore this practice must be stopped forthwith. See—**Order dated 06.9.2010 passed by the Hon’ble Allahabad High Court in Criminal Misc. Application No.7279/2006 Abdul Rasheed Vs. State of UP & Circulated amongst the judicial officers of the state of UP vide Hon’ble High Court’s letter.No 19096/2010 dated 30.11.2010.**

9. Order disposing of application u/s. 156(3) Cr.P.C. requires recording of reasons: While disposing of an application u/s. 156(3) of the Cr.P.C., Magistrate is bound to apply his mind to the facts contained in the application and the order passed must be a reasoned order. See--- **Ram Babu Gupta vs. State of U.P., 2001 ALJ 1587 (Allahabad—Full Bench).**

10. **Disposal of election petitions** : Where the Munsif had failed to analyze and apply his mind to the evidence adduced by parties in an election petition, the order was set aside as being non-speaking order passed without application of mind to the material on record. See---**Chandrika Prasad Yadav v. State of Bihar, (2004) 6 SCC 331.**

11. **Public auction proceedings** : An order passed by an authority directing public auction of some government property must be reasoned. See---**Rajamalliah vs. Anil Kishore, 1980 (Suppl.) SCC 81.**

12. **Administrative Orders to be reasoned**: 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. The Hon'ble Supreme Court has, in the matter of (i) **State of Rajasthan v. Rohitas and others, 2008 (61) ACC 678 (SC)** & (ii) **Ran Singh vs. State of Haryana, 2008 (62) ACC 848 (SC)** has ruled that order disposing of an application necessarily requires recording of reasons in support of the conclusions arrived at in the order irrespective of whether such an order is passed in exercise of judicial or administrative powers vested in the court or the 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 the Apex Court in the Case of :

- (i) **Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148 (para 44).**
- (ii) **Raj Kishore Jha v. State of Bihar & others, 2003 (4) ACC 1068 (SC).**

13. **Quasi-judicial proceedings**

14. **Disciplinary proceedings**

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. See-----

1. **Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain, (2005) 10 SCC 84.**
2. **Chandrika Prasad Yadav v. State of Bihar, (2004) 6 SCC 331.**
3. **Chairman & Managing Director, United Commercial Bank v. P.C. Kakkar, (2003) 4 SCC 364.**
4. **Govt. Branch Press vs. D.B. Belliappa, (1979) 1 SCC 477.**
5. **Siemens Engineering and Mfg. Co. vs. Union of India, (1976) 2 SCC 981.**
6. **Union of India vs. Mohan Lal Capoor & others, (1974) 1 SCR 797.**

* * * * *