मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय

क्रमांक एफ 11–47/2017/1/9 भोपाल, दिनांक 01/12/2017

प्रति

अपर मुख्य सचिव/प्रमुख सचिव/सचिव,
मंत्रालय,भोपाल
शासन के समस्त विभाग,
समस्त विभागाध्यक्ष,
समस्त संभागायुक्त,
समस्त कलेक्टर्स,
समस्त मुख्य कार्यपालन अधिकारी,जिला पंचायत,
मध्यप्रदेश ।

विषयः–प्रत्येक प्रशासकीय/अर्द्ध न्यायिक मामलों में स्पीकिंग आदेश पारित किये जाने के संबंध में ।

माननीय उच्च न्यायालय ने रिट पिटीशन क्रमांक 7120/15 (श्रीमती ताराबाई विरूद्ध श्रीमती शांति बाई एवं अन्य) में राज्य शासन का ध्यान आकृष्ट किया है कि जिला प्रशासन के एक अधिकारी ने निर्वाचन की एक पिटीशन में प्रकरण को पहले विचारोपरान्त स्पीकिंग आर्डर जारी न करते हुए खारिज किया, तदोपरांत माननीय न्यायालय के निर्देश देने के उपरांत भी प्रकरण में स्पीकिंग आर्डर जारी न करते हुए एक लाईन का आदेश "**प्रकरण विचारोपरांत अमान्य किया जाता है**"। पारित किया । इस पर माननीय उच्च न्यायालय द्वारा चिन्ता व्यक्त की गई है ।। (सुलभ संदर्भ हेतु माननीय उच्च न्यायालय के द्वारा जारी किए गए आदेश दिनांक 21.9.2017 की प्रति भी पत्र के साथ संलग्न है) ।

2/– प्रशासकीय/अर्द्धन्यायिक प्रकरणों में प्रशासकीय अधिकारियों से स्पीकिंग आर्डर पारित करने की अपेक्षा की जाती है। अतः उक्त स्थिति को ध्यान में रखते हुए निर्देशित किया जाता है कि प्रशासनिक अधिकारियों द्वारा प्रशासकीय/अर्द्धन्यायिक मामलों में अनिवार्य रूप से स्पीकिंग आर्डर पारित किए जाएँ ।

उक्त निर्देश का कड़ाई से पालन किया जाना सुनिश्चित किया जाए ।

01/12/17
(डॉ.अमिताभ अवस्थी)
उप सचिव
मध्यप्रदेश शासन
सामान्य प्रशासन विभाग

कमांक एफ 11–47/2017/1/9 भोपाल, दिनांक 01/12/2017

प्रतिलिपिः–

1. माननीय राज्यपाल के सचिव, राजभवन, भोपाल।
2. अध्यक्ष, राजस्व मण्डल, मध्यप्रदेश ग्वालियर।
3. प्रमुख सचिव, मध्यप्रदेश विधान सभा सचिवालय भोपाल।
4. रजिस्ट्रार जनरल, उच्चन्यायालय मध्यप्रदेश जबलपुर।
5. सचिव, लोकायुक्त, मध्यप्रदेश भोपाल।
6. सचिव, मध्यप्रदेश लोक सेवा आयोग, इन्दौर।
7. विशेष सहायक/निज सचिव, मान0 मुख्यमंत्री/मंत्री/राज्यमंत्री,मध्यप्रदेश।
8. मुख्य निर्वाचन पदाधिकारी, मध्यप्रदेश भोपाल।
9. सचिव, राज्य निर्वाचन आयोग/राज्य सूचना आयोग, मध्यप्रदेश भोपाल।
10. महाधिवक्ता/उपमहाधिवक्ता/अधिवक्ता, मध्यप्रदेश, जबलपुर/इन्दौर/ग्वालियर।
11. महालेखाकार, मध्यप्रदेश ग्वालियर/भोपाल।
12. अध्यक्ष, प्रोफेशनल एक्जामिनेशन बोर्ड/माध्यमिक शिक्षा मण्डल म0प्र0 भोपाल।
13. प्रमुख सचिव/सचिव, मुख्यमंत्री/मुख्यमंत्री कार्यालय भोपाल।
14. अपर मुख्य सचिव/अपर सचिव/उप सचिव, सामान्य प्रशासन वि0 मंत्रालय, भोपाल।
15. आयुक्त, जनसंपर्क, संचालनालय, मध्यप्रदेश भोपाल।
16. प्रमुख सचिव, (समन्वय),/उप सचिव, म0प्र0 शासन मुख्य सचिव कार्यालय मंत्रालय।
17. अवर सचिव, मध्यप्रदेश शासन सामान्य प्रशासन विभाग कक्ष–7–1 की ओर वेबसाइट पर अपलोड करने हेतु।

उप सचिव 01/12/17
मध्यप्रदेश शासन
सामान्य प्रशासन विभाग

मुख्य सचिव कार्यालय
CS/Gen-Co/ 840
Date 27/11/2017

HIGH COURT OF MADHYA PRADESH : JABALPUR
BENCH AT GWALIOR

//M E M O//

No. 33101 Gwalior, dt. 21.11.2017

To,

1. The Chief Secretary,
Government of M.P.,
BHOPAL (M.P.)

2. The Principal Secretary,
General Administration Department ,
Government of M.P., Vallabh Bhavan
BHOPAL (M.P.)

3. The Principal Secretary,
Department of Revenue,
Government of M.P., Vallabh Bhavan,
BHOPAL (M.P.)

Sub:- **Regarding transmission of a copy of order dt. 21.09.2017 passed by Hon'ble Court in Writ Petition no. 7120/15 (Smt. Tarabai Vs. Smt. Shantibai & Ors.).**

***

With reference to the subject cited above, please find enclosed herewith a true copy of **order dt. 21.09.2017 passed by Hon'ble Court in Writ Petition no. 7120/2015 (Smt. Tarabai Vs. Smt. Shantibai & Ors.)** for information and necessary compliance.

Encl:- As above.

21.11.17
(G.S.DUBEY)
PRINCIPAL REGISTRAR
Principal Registrar
High Court of Madhya Pradesh
Bench Gwalior

25 NOV 2017
ACS, GAD
PS, Rev.
PS (C)

Dak No. 567 ACS/GAD
Date 27.11.2017

1540/ACS/GAD 28/11/17

390/ABIK/GAD 28/11/2017

Similar copy earlier sent

3825 30/11/17

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

:SINGLE BENCH:
(HON'BLE SHRI JUSTICE ANAND PATHAK)

WRIT PETITION NO.7120/2015

Smt. Tarabai
Vs.
Smt. Shanti Bai & Ors.

Shri N.K. Gupta, learned senior counsel with Shri Ravi Gupta, learned counsel for the petitioner.
Shri Prashant Sharma, learned counsel for respondent No.1 -Smt. Shanti Bai.
Shri Anand Singh Sikarwar, learned counsel for respondent No.10.

Whether approved for reporting : Yes

Law laid down:

Every quasi-judicial/administrative order passed by the administrative authority must bear reason as it promotes clarity in governance and recipient of the order can analyse it objectively and pendency of the case before the Courts can be reduced drastically.

Practice of respondents that cases are decided in one line phrase "पक्करण पूर्ण विचारापेरांत अमान्य किया जाता ह" (case is rejected after due consideration) is against the doctrine of 'Natural Justice'.

Administrative authorities while performing quasi-judicial/administrative function must abreast with basic knowledge of statutes in which they are dealing with along with procedural law.

Time has come when 'Rule of Law' must be treated as one of the essential components of infrastructure so that development of other components of infrastructure may not be sacrificed at the altar of mis-governance.

While deciding the case in a slipshod manner quoting "पक्करण पूर्ण विचारापेरांत अमान्य किया जाता ह" is an antithesis to the 'Rule of

Law'.

Directions given by High Court are to be complied with by authorities specially if the order attained finality.

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ORDER
(Passed on 21-09-2017)

This is second visit of petitioner being crestfallen by the order dated 23-09-2015 (Annexure P/1) passed by respondent No.10 whereby the application under Order XIV Rule 2 of CPC has been rejected.

2- Precisely stated facts of the case for adjudication are that respondent No.1 -Smt. Shanti Bai filed an election petition under Section 122 of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 whereby election on the post of Sarpanch, Gram Panchayat, Lachayara, Block Kurwai District Vidisha was challenged. As per the submissions and pleadings contained in petition memo, election petition carried certain deficiencies as per M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification from Membership) Rules, 1995. It further appears that the Election Tribunal framed the issues and issue No.3 was framed about maintainability of election petition, therefore, petitioner filed an application under Order XIV Rule 2 of CPC that issue No.3 which was framed regarding maintainability of election petition is a legal issue, hence, the same be heard and decided as preliminary issue. The said contention was duly replied by the election petitioner (respondent No.1 herein) admitting the fact that on the date of filing of election petition, security deposit was not made and security deposit was made to Tahsildar on 26-04-2015; after filing the election petition on 24-02-2015. Therefore, according to learned counsel for the petitioner; violation of rule 7 of Rules of 1995 was apparent and being a mandatory condition, the said question ought to have been considered by the authority as preliminary issue. In the case of election of Gram Panchayat specified authority is Sub Divisional Officer (SDO) and as respondent No.10 was holding the said post at the relevant point of

time, therefore, arrayed as party respondent (later on; after filing of writ petition). The authority vide order dated 01-07-2015 dismissed the application preferred by the petitioner under Order XIV Rule 2 of CPC in a slipshod manner. Annexure P/6 reveals that no reason has been assigned for dismissal of the application nor any conclusion has been arrived at for such dismissal.

3- Being aggrieved by the said order, petitioner preferred writ petition bearing No.4567/2015 in which vide order dated 21-07-2015, this Court allowed the petition on the ground that the order passed by the SDO lacks any reason or finding whereas reasons are heartbeat of every judicial order. Matter was remanded back to the authority for fresh adjudication of the controversy wherein application under Order XIV Rule 2 of CPC had to be decided afresh. Respondent No.10 again passed the same cryptic order dated 23-09-2015 vide Annexure P/1; which is under challenge in this writ petition.

4- According to learned counsel for the petitioner, when Sub Divisional Officer earlier passed the order dated 01-07-2015 then this Court found the said order bereft of any reason and therefore, while deciding the said petition, remanded the matter back for consideration of application under Order XIV Rule 2 of CPC afresh. Still respondent No.10 showed the same attitude and passed the order in a slipshod manner without assigning any reason. Same is arbitrary, illegal and contemptuous in nature. Quasi judicial authority is duty bound to pass reasoned order so that it can be analyzed by the higher authority objectively when matter goes into appeal or revision. Learned counsel for the petitioner submits that respondent No.10 has not considered spirit of earlier order passed by this Court and repeated the same mistake, therefore, respondent No.10 be suitably punished for the willful disobedience of the order in not adhering to the directions given by this Court in writ petition. Besides the arguments on merits, learned counsel for the petitioner raised the ground of violation of principle of natural justice also. He referred the judgment rendered by the Hon'ble Apex Court in the matter of **Kranti Associates Private Limited & Anr. Vs. Masood Ahmed**

Khan & Ors., (2010) 9 SCC 496.

5- Learned counsel for respondent No.1/contesting respondent was not in a position to support impugned order. He fairly concedes that the order impugned suffers from arbitrariness and illegality. He fairly admits that the prescribed authority should have passed the impugned order while assigning reason.

6- It appears that during pendency of writ petition, petitioner impleaded authority (i.e. respondent No.10) by name who has passed the order and appropriate application was moved for impleadment of SDO, Kurwai District Vidisha by name. Therefore, respondent No.10 was added in the array of respondents. Respondent No.10 was noticed and was represented through her counsel and reply was filed. In the reply, respondent No.10 submits that maintainability of election petition is mixed question of fact and law, therefore, decision in respect of maintainability of election petition cannot be taken without taking evidence and without ascertaining the facts, therefore, she has rightly passed the impugned order.

7- According to her, the fact regarding security deposit by respondent No.1 at the time of filing of election petition is matter of record and therefore, as preliminary issue it cannot be decided. She prayed for dismissal of writ petition.

8- Heard learned counsel for the parties at length and perused the documents appended thereto.

9- Initially, in the first round of litigation, vide order dated 01-07-2015, respondent No.10 passed the order in which the order over application under Order XIV Rule 2 of CPC has been passed in a slipshod manner. The said one line order contains following remarks "CPC 14/2 का आवदेन विचारापेरांत निरस्त किया जाता हो।"

10- Petitioner preferred writ petition No.4567/2015 challenging the said order dated 01-07-2015 and on 21-07-2015, this Court passed a detailed and exhaustive order quoting the judgment rendered by the Hon'ble Apex Court in the matter of Kranti Associates Private Limited (supra). The said quote is reproduced for reference as under:

"(a) In India the judicial trend has always

been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to 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 the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) 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.

(m) 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 judges and decisionmakers less prone to errors but also makes them subject

to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

11- After considering mandate of Hon'ble Apex Court, this Court set aside the order dated 01-07-2015 with a direction to the SDO/Election Tribunal to decide the application under Order XIV Rule 2 of CPC in accordance with law. After remand, the matter was returned back to the SDO (respondent No.10 herein) and respondent No.10 again passed the same order without any alphabetical alteration even. It reads as under:

"CPC 14/2 का आवदेन विचारोपरांत खारिज किया जाता है।"

12- Only change after remand in the impugned order is that earlier the word "निरस्त" has been used for rejection and now in the impugned order the word "खारिज" has been used for rejection, rest of the alphabetical expressions are same.

13- Reiterating the mandate of Hon'ble Apex Court while discussing the importance of "Reason" by the Judicial, Quasi Judicial and Administrative Authorities meandering through the realm of Reason and its Importance in the decision making process, said principles are again reproduced to make these Principles; a 'Reality than a Ritual' by the decision making authorities. These principles are:

"(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise

of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to 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 the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) 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.

(m) 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 judges and decisionmakers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving

reasons for the decision is of the essence and is virtually a part of "due process".

14- Repeation of said principles are to bring home the point that reasons are heartbeats of conclusion. Where any authority acting as quasi judicial authority or as administrative authority, must record reason for arriving to a conclusion so that it facilitates the process of judicial review by superior Court or authority. It reduces the subjectivity and promote objectivity and omits arbitrariness. The concept adopted by the administrative authority while deciding the case of an employee under administrative authority or case of a citizen while functioning as quasi-judicial authority needs to be decided by Reason. It is seen repeatedly by this Court that administrative authorities have coined a phrase (in common parlance) while deciding the case of a litigant,. employee or citizen by quoting "पक्करण पूर्ण विचारापेरांत अमान्य किया जाता हं". This is an antithesis to the 'Rule of Law' and mandate of Hon'ble Apex Court which repeatedly guided and asserted for giving 'Reasons' in the judicial, quasi-judicial/administrative orders. What discussion or conclusion was in the mind of decision maker is reflected through Reasons and therefore, administrative authorities which at times perform quasi-judicial functions also; must record Reasons rather than concealing their thoughtful considerations/whims and fencies under the veil of phrase "पक्करण पूर्ण विचारापेरांत अमान्य किया जाता हं" (case is rejected after due consideration). This is against the fair play and transparency, which has been declared as a part of principle of natural justice **{See:Dev Dutt Vs. Union of India and others, (2008) 8 SCC 725}**. Similarly the doctrine (natural justice) is now termed as synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action and soul of the natural justice is fair play in action. Thus, natural justice has an expanding content and not stagnant concept.

15- Originally there were said to be only two principles of natural justice: (1) the rule against bias and (2) the right to be heard (audi alteram partem). However, subsequently, as noted in

A.K. Kraipak and Ors. Vs. Union of India & Ors (1969) 2 SCC 262 and **K.I. Shephard and others Vs. Union of India and others (1987) 4 SCC 431**, some more rule came to be added to the rules of natural justice, e.g. the requirement to give reasons vide **S.N. Mukherjee Vs. Union of India, (1990) 4 SCC 594**. In **Mrs. Maneka Gandhi Vs. Union of India and another, (1978) 1 SCC 248** (vida paras 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

16- The Hon'ble Apex Court in historic decision, A.K. Kraipak and Ors. (supra) has pointed out that the concept of quasi-judicial power has been undergoing radical change and such dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Later on, in other celebrated judgment of Mrs. Maneka Gandhi (supra) and **Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405** has expanded and explained the scope of natural justice. Therefore, administrative authorities are duty bound to assign reasons while deciding the case either functioning as quasi-judicial authority or as administrative authority.

17- Here in the present case, perusal of impugned order reflects three omissions on the part of Presiding Officer; one is she appears to be ignorant about the provisions of Civil Procedure Code, 1908 (hereinafter referred as CPC) which she referred in the order. She missed the chance to understand that CPC includes Sections, Orders and Rules. By referring 14/2, she escaped the legal provision that it was in respect of Order XIV Rule 2 of CPC, therefore, administrative/quasi judicial authorities must abreast with basic knowledge of statutes in which they are dealing with. For that, appropriate acclimatization session or refresher course of such administrative/quasi judicial authorities can be conceptualized and

implemented so that true import of spirit of natural justice and significance of Reasons may be inculcated in their decision making process.

18- Another omission reflected from the impugned order is ignorance of Presiding Officer about passing of earlier Court order; which (Court order) categorically mandates the Presiding Officer to proceed with the case by affording opportunity of hearing to the parties and to pass a reasoned order. This omission may be attributable to the Presiding Officer and/or to the ministerial staff also which is entrusted with the responsibility of keeping the record updated and make available to the Presiding Officer for ready reference.

19- Another omission occurred in the impugned order (which is the subject matter of discussion itself) is that no Reason has been assigned in passing the said order, specially in election petition in which democratic rights of citizenry are intrinsically involved and therefore, it virtually frustrates the very spirit of Constitutional Amendment by which Article 243 has been amended and local bodies have been given sufficient democratic and electoral authorities.

20- From the pleadings made and submissions advanced by learned counsel for the parties, it appears that respondent No.10 was the same authority who passed the order dated 01-07-2015 and when the matter was challenged in writ petition No.4567/2015 and matter went into remand for fresh adjudication, even then, the second time also, impugned order has been passed by the same authority in same manner. At the time of first order (dated 21-07-2015), respondent No.10 might not be aware of sanctity of Reasons while performing quasi-judicial functions, but when the matter was remanded back by this Court, respondent No.10 must have been enlightened by the direction of this Court as contained in the order dated 21-07-2015 passed in writ petition No.4567/2015. Thereafter repeating the same mistake, not only displays arbitrariness but also reflects casualness, negligence and/or defiance and has trappings of disobedience of the order dated 21-07-2015.

21- Directions given by this Court are to be complied with by the authorities especially when the order of this Court attains finality. Here, the authority (respondent No.10) had to comply the order but as referred above committed the same mistake. What would have weighed in the mind of respondent No.10 or what circumstances persuaded her, were not explained in the return filed by her. She only elaborated the reasons (subsequently in return) for passing the impugned order but elaboration of reasons in the reply to writ petition cannot make good the infirmity from which the impugned order suffers. The Hon'ble Apex Court in the matter of Mohinder Singh Gill (supra) has used beautiful expression to sum up while saying:

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22- Therefore, this Court also seeks effective intervention of administrative head of the department i.e. Principal Secretary (Revenue or General Administrative Department as the case may be) to reach to the truth and weed out chaff from the grains. Principal Secretary is advised to give directions for preliminary enquiry to competent authority of respondent No.10 about casualness/negligence of respondent No.10 while performing duty

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24- This would have laudable purpose because it will promote clarity in governance and recipient of the order would be in a position to challenge the same before higher authorities on basis of reasons assigned in the order. This endeavour of Administrative Machinery would drastically reduce pendency of the cases before this Court (including Civil/Criminal Courts) because large number of cases are pending before the Courts due to non assignment of Reasons while deciding the cases of citizenry in general and/or

employees of State in particular and after keeping pending for years together cases are ultimately remanded back to the authorities for fresh adjudication on merits. If reasons are assigned then fate of the case would be known to the employee/litigant/aggrieved person while challenging the order or accepting the said order as fate accomplii. Other suggestions issued in preceding paragraphs must also be thoughtfully considered. Steel frame of this State (Madhya Pradesh) must recollect in hindsight about the glorious past it possessed when it had efficient and effective administrator like Mr. R.P. Naronha and Mr. K.F. Rustamji.

25- Time has come when **'Rule of Law'** must be treated as one of the essential components of infrastructure (like Roads, Water, Electricity and Communication), so that development of other components of infrastructure may not be sacrificed at the altar of mis-governance. A sincere thought and endeavour in this direction is need of the hour.

27- *Resultantly*, on the basis of cumulative analysis, impugned order dated 23-09-2015 passed by Sub Divisional Officer, Kurwai District Vidisha is set aside. Parties are directed to appear before the said authority on **25-11-2017**, the date on which they will mark their attendance and take guidance from the Presiding Officer for further hearing on application under Order XIV Rule 2 of CPC as per law.

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Anil*

TRUE COPY
Section Officer
High Court of M.P.
Bench Gwalior

(Anand Pathak)
Judge

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

:SINGLE BENCH:
(HON'BLE SHRI JUSTICE ANAND PATHAK)

WRIT PETITION NO.7120/2015

Smt. Tarabai
Vs.
Smt. Shanti Bai & Ors.

Shri N.K. Gupta, learned senior counsel with Shri Ravi Gupta, learned counsel for the petitioner.
Shri Prashant Sharma, learned counsel for respondent No.1 -Smt. Shanti Bai.
Shri Anand Singh Sikarwar, learned counsel for respondent No.10.

Whether approved for reporting : Yes

Law laid down:

Every quasi-judicial/administrative order passed by the administrative authority must bear reason as it promotes clarity in governance and recipient of the order can analyse it objectively and pendency of the case before the Courts can be reduced drastically.

Practice of respondents that cases are decided in one line phrase "पक्करण पूर्ण विचारापेरांत अमान्य किया जाता ह" (case is rejected after due consideration) is against the doctrine of 'Natural Justice'.

Administrative authorities while performing quasi-judicial/administrative function must abreast with basic knowledge of statutes in which they are dealing with along with procedural law.

Time has come when 'Rule of Law' must be treated as one of the essential components of infrastructure so that development of other components of infrastructure may not be sacrificed at the altar of mis-governance.

While deciding the case in a slipshod manner quoting "पक्करण पूर्ण विचारापेरांत अमान्य किया जाता ह" is an antithesis to the 'Rule of

Law'.

Directions given by High Court are to be complied with by authorities specially if the order attained finality.

****

ORDER
(Passed on 21-09-2017)

This is second visit of petitioner being crestfallen by the order dated 23-09-2015 (Annexure P/1) passed by respondent No.10 whereby the application under Order XIV Rule 2 of CPC has been rejected.

2- Precisely stated facts of the case for adjudication are that respondent No.1 -Smt. Shanti Bai filed an election petition under Section 122 of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 whereby election on the post of Sarpanch, Gram Panchayat, Lachayara, Block Kurwai District Vidisha was challenged. As per the submissions and pleadings contained in petition memo, election petition carried certain deficiencies as per M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification from Membership) Rules, 1995. It further appears that the Election Tribunal framed the issues and issue No.3 was framed about maintainability of election petition, therefore, petitioner filed an application under Order XIV Rule 2 of CPC that issue No.3 which was framed regarding maintainability of election petition is a legal issue, hence, the same be heard and decided as preliminary issue. The said contention was duly replied by the election petitioner (respondent No.1 herein) admitting the fact that on the date of filing of election petition, security deposit was not made and security deposit was made to Tahsildar on 26-04-2015; after filing the election petition on 24-02-2015. Therefore, according to learned counsel for the petitioner; violation of rule 7 of Rules of 1995 was apparent and being a mandatory condition, the said question ought to have been considered by the authority as preliminary issue. In the case of election of Gram Panchayat specified authority is Sub Divisional Officer (SDO) and as respondent No.10 was holding the said post at the relevant point of

time, therefore, arrayed as party respondent (later on; after filing of writ petition). The authority vide order dated 01-07-2015 dismissed the application preferred by the petitioner under Order XIV Rule 2 of CPC in a slipshod manner. Annexure P/6 reveals that no reason has been assigned for dismissal of the application nor any conclusion has been arrived at for such dismissal.

3- Being aggrieved by the said order, petitioner preferred writ petition bearing No.4567/2015 in which vide order dated 21-07-2015, this Court allowed the petition on the ground that the order passed by the SDO lacks any reason or finding whereas reasons are heartbeat of every judicial order. Matter was remanded back to the authority for fresh adjudication of the controversy wherein application under Order XIV Rule 2 of CPC had to be decided afresh. Respondent No.10 again passed the same cryptic order dated 23-09-2015 vide Annexure P/1; which is under challenge in this writ petition.

4- According to learned counsel for the petitioner, when Sub Divisional Officer earlier passed the order dated 01-07-2015 then this Court found the said order bereft of any reason and therefore, while deciding the said petition, remanded the matter back for consideration of application under Order XIV Rule 2 of CPC afresh. Still respondent No.10 showed the same attitude and passed the order in a slipshod manner without assigning any reason. Same is arbitrary, illegal and contemptuous in nature. Quasi judicial authority is duty bound to pass reasoned order so that it can be analyzed by the higher authority objectively when matter goes into appeal or revision. Learned counsel for the petitioner submits that respondent No.10 has not considered spirit of earlier order passed by this Court and repeated the same mistake, therefore, respondent No.10 be suitably punished for the willful disobedience of the order in not adhering to the directions given by this Court in writ petition. Besides the arguments on merits, learned counsel for the petitioner raised the ground of violation of principle of natural justice also. He referred the judgment rendered by the Hon'ble Apex Court in the matter of **Kranti Associates Private Limited & Anr. Vs. Masood Ahmed**

Khan & Ors., (2010) 9 SCC 496.

5- Learned counsel for respondent No.1/contesting respondent was not in a position to support impugned order. He fairly concedes that the order impugned suffers from arbitrariness and illegality. He fairly admits that the prescribed authority should have passed the impugned order while assigning reason.

6- It appears that during pendency of writ petition, petitioner impleaded authority (i.e. respondent No.10) by name who has passed the order and appropriate application was moved for impleadment of SDO, Kurwai District Vidisha by name. Therefore, respondent No.10 was added in the array of respondents. Respondent No.10 was noticed and was represented through her counsel and reply was filed. In the reply, respondent No.10 submits that maintainability of election petition is mixed question of fact and law, therefore, decision in respect of maintainability of election petition cannot be taken without taking evidence and without ascertaining the facts, therefore, she has rightly passed the impugned order.

7- According to her, the fact regarding security deposit by respondent No.1 at the time of filing of election petition is matter of record and therefore, as preliminary issue it cannot be decided. She prayed for dismissal of writ petition.

8- Heard learned counsel for the parties at length and perused the documents appended thereto.

9- Initially, in the first round of litigation, vide order dated 01-07-2015, respondent No.10 passed the order in which the order over application under Order XIV Rule 2 of CPC has been passed in a slipshod manner. The said one line order contains following remarks "CPC 14/2 का आवदेन विचारापेरांत निरस्त किया जाता है।"

10- Petitioner preferred writ petition No.4567/2015 challenging the said order dated 01-07-2015 and on 21-07-2015, this Court passed a detailed and exhaustive order quoting the judgment rendered by the Hon'ble Apex Court in the matter of Kranti Associates Private Limited (supra). The said quote is reproduced for reference as under:

"(a) In India the judicial trend has always

been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to 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 the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) 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.

(m) 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 judges and decisionmakers less prone to errors but also makes them subject

to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

11- After considering mandate of Hon'ble Apex Court, this Court set aside the order dated 01-07-2015 with a direction to the SDO/Election Tribunal to decide the application under Order XIV Rule 2 of CPC in accordance with law. After remand, the matter was returned back to the SDO (respondent No.10 herein) and respondent No.10 again passed the same order without any alphabetical alteration even. It reads as under:

"CPC 14/2 का आवदेन विचारापेरांत खारिज किया जाता है।"

12- Only change after remand in the impugned order is that earlier the word "निरस्त" has been used for rejection and now in the impugned order the word "खारिज" has been used for rejection, rest of the alphabetical expressions are same.

13- Reiterating the mandate of Hon'ble Apex Court while discussing the importance of "Reason" by the Judicial, Quasi Judicial and Administrative Authorities meandering through the realm of Reason and Its Importance in the decision making process, said principles are again reproduced to make these Principles; a 'Reality than a Ritual' by the decision making authorities. These principles are:

"(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

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reasons for the decision is of the essence and is virtually a part of "due process".

14- Repeation of said principles are to bring home the point that reasons are heartbeats of conclusion. Where any authority acting as quasi judicial authority or as administrative authority, must record reason for arriving to a conclusion so that it facilitates the process of judicial review by superior Court or authority. It reduces the subjectivity and promote objectivity and omits arbitrariness. The concept adopted by the administrative authority while deciding the case of an employee under administrative authority or case of a citizen while functioning as quasi-judicial authority needs to be decided by Reason. It is seen repeatedly by this Court that administrative authorities have coined a phrase (in common parlance) while deciding the case of a litigant, employee or citizen by quoting "पक्करण पूर्ण विचारापेरांत अमान्य किया जाता ह". This is an antithesis to the 'Rule of Law' and mandate of Hon'ble Apex Court which repeatedly guided and asserted for giving 'Reasons' in the judicial, quasi-judicial/administrative orders. What discussion or conclusion was in the mind of decision maker is reflected through Reasons and therefore, administrative authorities which at times perform quasi-judicial functions also; must record Reasons rather than concealing their thoughtful considerations/whims and fencies under the veil of phrase "पक्करण पूर्ण विचारापेरांत अमान्य किया जाता ह" (case is rejected after due consideration). This is against the fair play and transparency, which has been declared as a part of principle of natural justice **{See:Dev Dutt Vs. Union of India and others, (2008) 8 SCC 725}**. Similarly the doctrine (natural justice) is now termed as synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action and soul of the natural justice is fair play in action. Thus, natural justice has an expanding content and not stagnant concept.

15- Originally there were said to be only two principles of natural justice: (1) the rule against bias and (2) the right to be heard (audi alteram partem). However, subsequently, as noted in

A.K. Kraipak and Ors. Vs. Union of India & Ors (1969) 2 SCC 262 and **K.I. Shephard and others Vs. Union of India and others (1987) 4 SCC 431**, some more rule came to be added to the rules of natural justice, e.g. the requirement to give reasons vide **S.N. Mukherjee Vs. Union of India, (1990) 4 SCC 594. In Mrs. Maneka Gandhi Vs. Union of India and another, (1978) 1 SCC 248** (vida paras 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

16- The Hon'ble Apex Court in historic decision, A.K. Kraipak and Ors. (supra) has pointed out that the concept of quasi-judicial power has been undergoing radical change and such dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Later on, in other celebrated judgment of Mrs. Maneka Gandhi (supra) and **Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405** has expanded and explained the scope of natural justice. Therefore, administrative authorities are duty bound to assign reasons while deciding the case either functioning as quasi-judicial authority or as administrative authority.

17- Here in the present case, perusal of impugned order reflects three omissions on the part of Presiding Officer; one is she appears to be ignorant about the provisions of Civil Procedure Code, 1908 (hereinafter referred as CPC) which she referred in the order. She missed the chance to understand that CPC includes Sections, Orders and Rules. By referring 14/2, she escaped the legal provision that it was in respect of Order XIV Rule 2 of CPC, therefore, administrative/quasi judicial authorities must abreast with basic knowledge of statutes in which they are dealing with. For that, appropriate acclimatization session or refresher course of such administrative/quasi judicial authorities can be conceptualized and

implemented so that true import of spirit of natural justice and significance of Reasons may be inculcated in their decision making process.

18- Another omission reflected from the impugned order is ignorance of Presiding Officer about passing of earlier Court order; which (Court order) categorically mandates the Presiding Officer to proceed with the case by affording opportunity of hearing to the parties and to pass a reasoned order. This omission may be attributable to the Presiding Officer and/or to the ministerial staff also which is entrusted with the responsibility of keeping the record updated and make available to the Presiding Officer for ready reference.

19- Another omission occurred in the impugned order (which is the subject matter of discussion itself) is that no Reason has been assigned in passing the said order, specially in election petition in which democratic rights of citizenry are intrinsically involved and therefore, it virtually frustrates the very spirit of Constitutional Amendment by which Article 243 has been amended and local bodies have been given sufficient democratic and electoral authorities.

20- From the pleadings made and submissions advanced by learned counsel for the parties, it appears that respondent No.10 was the same authority who passed the order dated 01-07-2015 and when the matter was challenged in writ petition No.4567/2015 and matter went into remand for fresh adjudication, even then, the second time also, impugned order has been passed by the same authority in same manner. At the time of first order (dated 21-07-2015), respondent No.10 might not be aware of sanctity of Reasons while performing quasi-judicial functions, but when the matter was remanded back by this Court, respondent No.10 must have been enlightened by the direction of this Court as contained in the order dated 21-07-2015 passed in writ petition No.4567/2015. Thereafter repeating the same mistake, not only displays arbitrariness but also reflects casualness, negligence and/or defiance and has trappings of disobedience of the order dated 21-07-2015.

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