HIGH COURT OF GUJARAT *(F.B.)*

TESTEELS LIMITED
V/S
N M DESAI

Date of Decision: 05 April 1968

Citation: 1968 LawSuit(Guj) 38

Hon'ble Judges: P N Bhagwati, N K Vakil, D A Desai

Eq. Citations: 1970 AIR(Guj) 1, 1969 GLR 622, 1970 (1) LLJ 210, 1970 (20) FLR 121, 1970 LabIC 35, 1969 (4) GLT 332

Case Type: Special Civil Application

Case No: 433 of 1964

Subject: Constitution, Labour and Industrial

Head Note:

Administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders - Conciliation officer is an administrative officer. Order under S.33(2)(b) is a final order affecting the right -must be supported by reasons.

Every Administrative Officer exercising quasi-judicial functions is bound to give reasons in support of the order he makes. The conciliation officer exercising quasi-judicial functions under sec. 33(2)(b) of the Industrial Disputes Act is bound to make a speaking order or in other words reasons must be stated on the face of the order. (Paras 2 and 14). There are two strong and cogent reasons why every quasi-judicial order must disclose reasons in support of it. (1) The duty to act judicially excludes arbitrary exercise of power and it is essential to the rule of law that the duty to act judicially is strictly observed by the administrative authorities

upon whom it is laid. If any departure from the observance of the duty to act judicially could pass unnoticed it would open the door to arbitrariness and make a serious inroad on the rule of law. The necessity of giving reasons is one of the most important safeguards to ensure observance of the duty to act judicially. If the administrative officers can make orders without giving reasons such power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. If the administrative officers having a duty to act judicially are required to set forth in writing the mental processes of reasoning which have led them to the decision it would to a large extent help to ensure Performance of the duty to act judicially and exclude arbitrariness and caprice in the discharge of their functions. (2) The necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction. (Paras 3 and 4) Industrial Disputes Act (XIV of 1947)-Sec. 33(2)(b)-Order under sec. 33(2)(b) cannot be regarded as an order of interlocutory character. Such order is final and must be supported by reasons. An order granting or refusing approval under sec. 33(2)(b) of the Industrial Disputes Act cannot be regarded as an order of interlocutory character. Such an order is a final order affecting the right of the employer to discharge the employee by refusing to accord approval to the action of discharge taken by the employer and is therefore in any view of the matter required to be supported by reasons (Para 12) Jaswant Sugar Mills Ltd. v. Lakshmi Chand and ors. Pirbhai v. B. R. Manepatil Trambaklal Mohanlal v. M.K. Thakor Bhagat Raja v. Union of India and ors S. G Jaisinghani v. Union of India and ors. Madhya Pradesh Industries Ltd v. Union of India and ors. Robinson v. Minister of Town and Country Planning Rex v. Northumberland Compensation Appeal Tribunal Express Newspapers Ltd v. Union of India Govindrao v. The State of Madhya Pradesh Punjab National Bank Ltd. v. All India Punjab National Bank Employees Federation and anr. Tata Iron and Steel Co. Ltd. v. Modak referred to.

Acts Referred:

Constitution of India Art 226, Art 32

Industrial Disputes Act, 1947 Sec 33(2)(b)

Advocates: K S Nanavati, I M Nanavati, G M Vidyarthi, K L Talsania, N J Mehta, C T Daru

Reference Cases:

Cases Cited in (+): **54**

Cases Referred in (+): **12**

Judgement Text:-

Bhagwati C J

[1] This Reference raises a very important question in the field of administrative law. The question is whether an administrative officer discharging quasi-judicial functions is bound to give reasons in support of the order he makes. Is it required of him that he should make a speaking order ? The question arises in reference to an order made by the conciliation officer under sec. 33(2)(b) of the Industrial Disputes Act, 1947. A conciliation proceeding was pending before the conciliation officer in regard to an industrial dispute between the petitioner and its workmen. During the pendency of the conciliation proceeding, the petitioner discharged the second respondent who was one of the workmen employed in the factory of the petitioner after following the procedure prescribed by the Standing Orders. The discharge was for misconduct not connected with the industrial dispute pending before the conciliation officer and it was, therefore, necessary for the petitioner under the proviso to sec. 33(2)(b) to make an application to the conciliation officer for approval of the action taken by it. The petitioner accordingly made an application to the conciliation officer for approval of the order of discharge passed by the petitioner. The second respondent to whom notice of the application was issued contested the application on grounds which it is not necessary to mention for the purpose of the present decision. The conciliation officer by an order contained in a letter dated 6th March 1964 intimated to the petitioner that its action regarding discharge of the second respondent was not approved. Beyond stating that the action of discharge of the second respondent was not approved, the order did not give any reasons why the conciliation officer had decided not to approve petitioner's action of discharging the second respondent. The petitioner was aggrieved by the order made by the conciliation officer and it accordingly filed the present petition challenging the validity of the said order.

[2] The petition originally came up for hearing before a Division Bench of this Court consisting of Bakshi and Thakor JJ. At the hearing before the Division Bench, five contentions were raised on behalf of the petitioner challenging the validity of the impugned order. Of them the first four contentions are material for the purpose of the present reference. The first contention was that the conciliation officer acting under sec. 33(2)(b) exercises quasi-judicial functions; the second contention was that the conciliation officer while so acting is a tribunal within the meaning of Articles 136 and 227 of the Constitution; the third contention was that even if the conciliation officer is not a tribunal, be is still amenable to the jurisdiction of the High Court under Article 226 and the fourth contention was that since the conciliation officer is exercising quasi-judicial functions and is amenable to the jurisdiction of the High Court under Article 226, he is bound to make a speaking order or in other words, he must give reasons in support of the order he makes. The Division Bench after hearing the Advocates appearing on behalf of the parties came to the conclusion, relying on a decision of the Supreme Court in Jaswant Sugar Mills Ltd. v. Lakslimi Chand and others, A.I.R. 1963 S.C. 677 that the conciliation officer acting under sec. 33(2)(b) is under a duty to act judicially and his decision is, therefore, a quasi-judicial and not an administrative decision and he is accordingly amenable to the jurisdiction of the High Court under Article 226 but he is not a tribunal within the meaning of Articles 136 and 227. Disposing of thus the first three contentions, the Division Bench then proceeded to consider the fourth contention. Two decisions of two different Division Benches of this High Court were cited before the Division Bench on behalf of the respondents in support of the contention that a quasi-judicial authority is not bound to give reasons in support of Its order and that the order is not vitiated by absence of reasons supporting It. One was a decision of a Division Bench consisting of J. M. Shelat, C.J., as he then was, and myself in Pirbhai v. B. R. Manepatil. VI G.L.R., 554. The challenge in that case was against the determination of the Collector under sec. 31 of the Bombay Stamp Act, 1958 and the decision of the Chief Controlling Revenue Authority under sec. 53(2) of that Act. One of the grounds of challenge was that the determination of the Collector as also the decision of the Chief Controlling Revenue Authority were both quasi-judicial decisions and since neither of these two decisions was supported by any reasons, both these decisions were invalid. This ground of challenge was negatived by the Division Bench on the view that the functions discharged by the Collector and the Chief Controlling Revenue Authority were administrative and not quasi-judicial and therefore the premise on which the necessity for giving reasons was sought to be imported was lacking. But the Division Bench also proceeded to observe in a judgment given by me on behalf of the Division Bench :

"...neither principle nor authority requires that a quasi-judicial body giving its decision must give reasons in support of the decision. The only qualification to this rule is where an appeal is provided against the decision of the quasi-judicial body. In such a case the necessity of giving reasons in support of the decision is imported because unless reasons are given, it would not be possible for the appellate authority to examine the correctness of the decision. But apart from such case, there is no obligation on a quasi judicial body to give reasons in support of the decision arrivedat by it so as long the decision is reached after observing the principles of natural justice."

These observations were clearly obiter but strong reliance was placed upon them on behalf of the respondents. The other decision was a decision of a Division Bench consisting of Miabhoy and Shah JJ. in Special Civil Application No. 638 of 1965 decided on 6th and 7th September 1965 where the same view taken in regard to an order made by the Regional Transport Authority granting temporary permit to one applicant in preference to another. Now both these decisions were given at a time when the Supreme Court had not decided the case of Bhagat Raja v. Union of India and others, A.I.R. 1967 S.C. 1606 and the petitioner therefore contended that in view of the subsequent decision of the Supreme Court in Bhagat Raja's case, these two decisions could not be regarded as good law and it must be held that the necessity of giving reasons is one of the essential requirements of quasi-judicial process and a quasi-judicial authority must, therefore, give reasons in support of the order it makes on pain of its invalidity. The Division Bench was of the view that the decision of the Supreme Court in Bhagat Raja's case was confined to a case of a tribunal amenable to the appellate jurisdiction of the Supreme Court under Article 136 and it did not lay down any broad proposition that every quasi-judicial authority, whether a tribunal or not, must give reasons in support of its order and the aforesaid two decisions of this Court could not therefore be regarded as overruled either expressly or by necessary implication but there were certain observations in the Supreme Court decision which in the view of the Division Bench rendered it necessary to reconsider the ratio of these two decisions and the Division Bench, therefore, referred the following question to a larger Bench:

"Whether a conciliation officer, who is exercising quasi-judicial functions and is as such amenable to the jurisdiction of the High Court under Article 226, is bound to make a speaking order or, in other words, he must give reasons in the order?"

We are of the view, both on principle and on authority, that every administrative officer exercising quasi-judicial functions is bound to give reasons in support of the order he makes and since the conciliation officer was exercising quasi-judicial functions, he was bound to make a speaking order or, in other words, to give reasons in support of the impugned order. We will first examine the question on principle.

[3] There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice-social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some of these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well-settled and as pointed out by Shah J. in Jaswant Sugar Mills's case (supra), a quasi-judicial decision involves the following three elements :

(1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

(2) it declares rights or imposes upon parties obligations affecting their civil rights; and

(3) the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute he on question of law, on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact

The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter "solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations" by applying "pre-existing legal norms to factual situations". The duty to act judicially excludes arbitrary exercise of power and it is, therefore, essential to the rule of law that the duty to act judicially is strictly observed by the administrative authorities upon whom it is laid. If any departure from the observance of the duty to act judicially could pass unnoticed, it would open the door to arbitrariness and make a serious inroad on the rule of law. To quote the words of the Supreme Court in S. G. Jaisinghanl v. Union of India and others, A.I.R. 1967 S.C. 1427 :

".....the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. " Now the necessity of giving reasons is one of the most important safeguards to ensure observance of the duty to act judicially. If the administrative officers can make orders without giving reasons, such power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But if reasons are required to be given for an order, it will be an effective restraint on such abuse as the order, if it discloses extraneous or irrelevant considerations or is arbitrary, will be subject to judicial scrutiny and

correction. As observed by Subba Rao J., as he then was, in Madhya Pradesh Industries ltd. v. Union of India and others, A.I.R. 1966 S.C. 671, "A speaking order will at its best be a reasonable and at its worst at least a plausible one". The condition to give reasons introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision making process: it gives satisfaction to the party against whom the order is made and guarantees consideration of all relevant factors and discharge of his functions by the officer in accordance with the requirement of law. We may in this connection usefully quote the following passage from "American Administrative Law" by Bernard Schwartz at page 163 :

"The value of reasoned decisions as a check upon the arbitrary use of administrative power Secms clear The right to know the reasons for a decision which adversely affects one's person or property is a basic right of every litigant (and that whether the forum be judicial or administrative). But the requirement that reasons be given does more than merely vindicate the right of the individual to know why a decision injurious to him has been rendered. For the obligation to give a reasoned decision is a substantial check upon the misuse of power The giving of reasons serves both to convince those subject to decisions that they are not arbitrary and to ensure that they are not, in fact, arbitrary. The need publicly to articulate the reasoning process upon which a decision is based, more than anything else, requires the magistrate (judicial or administrative) to work out in his own mind all the factors which are present in a case. A decision supported by specific findings and reasons is much less likely to rest on caprice or careless consideration. As Judge Jerome Frank well put it. in language as applicable to decision-making by administrators as by trial judges, the requirement of reasons has the primary purpose of evoking care on the part of the decider.....".

If the administrative officers having a duty to act judicially are required to set forth in writing the mental processes of reasoning which have led them to the decision, it would to a large extent help to ensure performance of the duty to act judicially and exclude arbitrariness and caprice In the discharge of their functions. The public should not be deprived of this only safeguard.

[4] Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Art. 32. The High Court under Art. 226 and the Supreme Court under Art. 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction.

[5] This has always been regarded as a most important reason in the United States for insisting that quasi-judicial decisions must show reasons on their face. To quote from Schwartz's "American Administrative Law" at page 166 :

> "In the United States, perhaps the most prominent reason advanced for the requirement of reasoned decisions is the role of such decisions in facilitating review by the Courts. If the bases of administrative decisions are not articulated, it is most difficult for a reviewing Court to determine whether the decision is a proper one. 'We must know what a decision means before the duty becomes ours to say whether it is right or wrong, reads an oft-cited statement of Cardozo J.....for judicial control to be of practical value, the administrative tribunal or agency, in making its order, should not make it an unspeaking or unintelligible order, but should in some way, state upon the face of the order the elements which had led to the decision'. The words quoted are from a noted judgment of Lord Cairns, L. C. in which he laid

down the distinction between 'speaking' and 'unspeaking' orders, which has become of basic importance in present day English admistrative law. When Lord Cairns speaks of an 'unspeaking or unintelligible order', he obviously means an order which gives no reasons. If the administrator does not give reasons, he, in effect, disarms the exercise of the High Court's supervisory jurisdiction. In such a case, the Court cannot examine further than the face of the challenged decision, which, in Lord Summer's famous phrase, 'speaks' only with 'inscrutable face of a sphinx'.".

It is therefore necessary for giving full meaning and content to the power of judicial review conferred on the High Court and the Supreme Court by the Constitution that every administrative officer exercising quasi-judicial functions must make a speaking order, that is, give reasons in support of the order. If the order speaks only with the "inscrutable face of a sphinx" it would be impossible for the High Court and the Supreme Court to effectively exercise their power of judicial review by means of certiorari.

[6] This view is not only supportable on principle but it is also in consonance with the trend of juristic thought in the United States where there is considerable development in the field of administrative law in recent times. In the United States, as will be evident from the two passages from Schwartz's "American Administrative Law" quoted above, the American Courts have always insisted that administrative decisions should be speaking ones, that is they must contain at least the findings upon which they are based and the reasons which have prevailed with them in introducing this requirement are the same two reasons which have found favour with us. It is also interesting to find that the administrative law in France has moved in the same direction For a long time Conseil d'Etat consistently refused to require that the administration should give reasons for its decisions in the absence of a statutory provision imposing that requirement. But in a decision rendered by it in 1950 Conseil d'Etat opened, in the words of one commentator, "a first breach in the established jurisprudence under which, in the absence of a legal text requiring it the decisions of the administrative authorities need not be reasoned ones" and annulled an administrative decision in which no reasons were given. The Commissaire du Government there advocated a bold departure from the prior case law and stated that the Conseil should require reasoned decision in every case in which the administrator was exercising quasi-judicial functions, even though the

Legislature did not expressly impose such requirement. Otherwise, he asked, bow could the Conseil really determine the validity of a challenged decision. In its decision adopting the approach of the Commissaire, the Conseil d'Etat stated that the obligation to give reasons was imposed "in order to enable the reviewing Court to determine whether the directions and prohibitions contained in the law have been followed. " This is the same reason which has motivated the American Courts in requiring that administrative decisions must contain findings that show their basis and it is the same reason which has appealed to us for taking the view that in India too, as in the United States and France, administrative officers exercising quasi-judicial functions must make speaking orders.

[7] The position in England is of, course different and therefore strongest reliance was placed upon it on behalf of the State In England, though in the Liquor Licence Cases decided in the latter half of the nineteenth century the view was taken that the Licensing Justices who were empowered to refuse liquor licences on "our specified grounds must specify the grounds for refusal in the order made by them and if they failed to do so, an order of mandamus would issue to compel them to hear and determine the applications according to law, it appears that, as a general rule, no duty to give reasons in support of a quasi-judicial order is recognised by the Courts. The decisions in the Liquor Licence Cases are regarded as somewhat anomalous and the considered view has always been that a quasi-judicial authority is not subject to any duty to give reasons for its decision. The decision in Robinson v. Minister of Town and Country Planning, (1947) K.B. 702 clearly Secms to suggest that even if the Minister exercises quasi-judicial functions, there is no obligation on him to give reasons for his decision. This view is also implicit in the decision of the Court of Appeal in Rex v. Northumberland Compensation Appeal Tribunal, (1952) 1 K.B. 338. In that case, the Court held that a quasi-judicial decision of an administrative tribunal could be quashed by certiorari for error of law where it "spoke" its error on its face. But where the decision was not contained in such a "speaking order", the Court would not intervene. There is implicit in this decision the recognition of the possibility that a quasi-judicial authority may not make a speaking order. This being the position, the Donoughmore Committee on Ministers' cowers in its report made in 1932 formulated the principle that a party is entitled to know the reasons for the decision, be it judicial or quasi-judicial, and recommended acceptance of this principle as a principle of natural justice. Pursuant to this recommendation the British Parliament when it came to enact the Tribunals and Inquiries Act, 1958 introduced sec. 12 in that Act which now expressly requires that in certain circumstances, the administrative tribunals specified in the First Schedule as also the Ministers holding a statutory inquiry

must give reasons for the decision. Thus what the Courts failed to achieve by the process of judicial construction had to be set right by Parliamentary legislation. But what the Parliament did serves to emphasize the necessity of giving reasons in support of a quasi-judicial decision.

[8] So much on principle. But quite apart from principle, there is in our view clear authority for the proposition that every quasi-judicial decision must be supported by reasons. The germ of this principle is to be found in the decision of the Supreme Court in Express Newspapers Ltd. v. Union of India, A.I.R. 1958 S.C. 578. In that case the validity of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 was challenged inter alia on the ground that the impugned Act did not provide for the giving of reasons for its decision by the Wage Board and thus rendered the petitioners' right to approach the Supreme Court for the enforcement of their fundamental rights nugatory. Dealing with this contention, N. H. Bhagwati J. speaking on behalf of the Supreme Court said :

> "It is no doubt true that if there was any provision to be found in the impugned Act which prevented the wage board from giving reasons for its decision, it might be construed to mean that the order which was thus made by the wage board could not be a speaking order and no writ of certiorari could ever be available to the petitioners in that behalf. It is also true that in that event this Court would be powerless to redress the grievances of the petitioners by issuing a writ in the nature of certiorari and the fundamental right which a citizen has of approaching this Court under Art. 32 of the Constitution would be rendered nugatory."
>
> The Supreme Court, however, took the view that there was no provision in the main Act which prevented the Wage Board from giving reasons for its decision and the challenge was negatived on that ground. But these observations undoubtedly support the second reason which we have given for taking the view that reasons must be given in support of every quasi-judicial decision.

[9] There is also another decision of the Supreme Court on the point and that is the decision in Govindrao v. The State of Madhya Pradesh, A.I.R. 1965 S.C. 1222. The appellants in that case claiming to be the descendants of former Ruling Chiefs in some

districts of Madhya Pradesh applied under the Central Provinces and Berar Revocation of Land Revenue Exemption Act, 1948, for grant of money or pension as suitable maintenance for themselves. They held estates in two districts on favourable terms as Jahgirdars, Maufidars and Ubaridars and enjoyed exemption from payment of land revenue amounting in the aggregate to Rs. 27, 828-5-0 per year. On the passing of the Act the exemption was lost and they claimed to be entitled to grant of money or pension under the provisions of the Act. They applied to the Deputy Commissioner who forwarded their applications to the State Government. These were rejected without any reasons being given therefor. The appellants filed a petition in the High Court of Madhya Pradesh under Article 226 for a writ of certiorari to quash the order of the State Government. On the petition being dismissed, the appellants preferred an appeal to the Supreme Court. One of the grounds of challenge before the Supreme Court was that the order of the State Government was invalid since the appellants had not been heard by the State Government before making the order and the order was not supported by any reasons. The Supreme Court upheld this ground of challenge observing:

> "The next question is whether Government was justified in making the order of April 26, 1955 ? That order gives no reasons at all. The Act lays down upon the Government a duty which obviously must be performed in a judicial manner. The appellants do not Secm to have been heard at all. The Act bars a suit and there is all the more reason that Government must deal with such cases in a quasi-judicial manner giving an opportunity to the claimants to state their case in the light of the report of the Deputy Commissioner. The appellants were also entitled to know the reason why their claim for the grant of money or a pension was rejected by Government and how they were considered as not falling within the class of persons who it was clearly intended by the Act to be compensated in this manner. Even in those cases where the order of the Government is based upon confidential material this Court has insisted that reason should appear when Government performs curial or quasi-judicial functions (Sec M/s. Hart Nagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhumvala, (1962) 2 S.C.R. 339 : (A.I.R. 1961 S.C. 1669). The High Court did not go into any other question at all because it rejected the petition at the threshold on its interpretation of sec. 5(3). That interpretation has been found by us to be erroneous and the order of the High Court must be set aside. As the order of Government does not fulfil the elementary requirements of a quasi judicial process we do not consider it necessary to order a remit to the High Court. The order of the State

Government must be set aside.....".

The Supreme Court held that the necessity to give reasons was an elementary requirement of quasi-judicial process and since the order of the Government did not fulfil this elementary requirement, it was liable to be set aside. This decision to our mind is a direct authority for the proposition that every quasi-judicial decision must be supported by reasons and no further authority is necessary in support of the proposition.

[10] But if any further authority were needed, it is to be found in the recent decision of the Supreme Court in Bhagat Raja's case (supra). The order impugned in that case was an order of the Central Government in exercise of its revisional power under rule 55 of the Mineral Concession Rules, 1960 and the question directly arose whether the order was bad in that it did not give any reasons in support of it The Supreme Court after an elaborate review of various decisions bearing on the point came to the conclusion that the Central Government was bound to give reasons in support of the impugned order and since no reasons had been given, the impugned order was bad. This decision was sought to be distinguished on behalf of the State on the ground that the Central Government whose order was impugned in that case was a tribunal within the meaning of Article 136 and therefore subject to the appellate jurisdiction of the Supreme Court under that Article and it was the existence of this right of appeal to the Supreme Court against the order of the Central Government which weighed with the Supreme Court in taking the view that the order of the Central Government required to be supported by reasons. The argument on behalf of the State was that the ratio of this decision was confined to a case of quasi-judicial authority which was a tribunal within the meaning of Article 136 and it had no application where an order made by a quasi-judicial authority other than a tribunal was in question. This argument is in our view not well-founded. It ignores the true ratio of the Supreme Court decision. It is undoubtedly true that the Central Government was a tribunal within the meaning of Article 136 and the Supreme Court therefore emphasized the existence of a right of appeal against the decision of the Central Government under that Article but the reasoning on which the decision was based is applicable alike to a case of an administrative authority which is not a tribunal within the meaning of Article 136. Just as there is a right of appeal against the decision of a tribunal under Article 136, there is a right of judicial review against the decision of a quasi-judicial authority under Articles 226 and 32 and the reasons which impelled the Supreme Court to import the necessity of giving reasons because there is a right of

appeal under Article 136 must equally apply in spelling out the necessity of giving reasons when there is a right of judicial review under Articles 226 and 32. If the right of appeal under Article 136 would be stultified by absence of reasons, equally would the right of judicial review under Articles 32 and 226 be stultified if no reasons are given. Moreover we find that first reason which we have given above for importing the necessity of giving reasons is also adverted to by the Supreme Court in paragraph 13 of the judgment and has been relied upon for the purpose of holding that the Central Government was bound to give reasons in support of its order and the validity of this reason does not depend upon whether the quasi-judicial authority is a tribunal or not. This decision also, therefore, supports the view we are inclined to take.

[11] It may be noted that so far this question is concerned, the only contest was from the State and the second respondent did not dispute that an administrative officer discharging quasi-judicial functions must give reasons in support of the order made by him. But the contention of the second respondent was that this requirement was applicable only in case of a final order and not in case of an interlocutory order. If an interlocutory order was made by an administrative officer it was not required to be supported by reasons and the administrative officer could make it without giving reasons. The second respondent urged that the impugned order of the conciliation officer refusing to accord approval to the petitioner to discharge the second respondent was In the nature of an interlocutory order in the main conciliation proceeding which was pending before the conciliation officer and the conciliation officer was, therefore, not bound to give reasons in support of his order. We cannot accept this argument. We are not at all sure that an interlocutory order need not show reason on its face but even if we assume with the second respondent that an interlocutory order stands on a different footing from a final order in this respect, we do not think that the impugned order was an interlocutory order. The impugned order was an order made on an application for approval of the action of discharge of the second respondent taken by the petitioner and this application had to be made under sec. 33(2)(b) because conciliation proceedings were pending before the conciliation officer. Sec. 33(2)(b) places a ban on the employer from discharging any workman concerned in any industrial dispute during the pendency of conciliation proceeding before the conciliation officer unless on an application made by him, be obtains approval of the conciliation officer to the action of discharge taken by him. The object and purpose of placing this ban on the employer is clear. By imposing the ban, as observed by Gajendragadkar J., as he then was, in Punjab National Bank Ltd., v. All India Punjab National Bank Employees' Federation and another,

A.I.R. 1960 S. C. 160 at page 161 : ".....Sec. 33 attempts to provide

for the continuance and termination of the pending proceedings in a peaceful atmosphere undisturbed by any cause of friction between the employees. In substance it insists upon the maintenance of the status quo pending the disposal of the industrial dispute between the parties; nevertheless it recognizes that occasions may arise when the employer may be justified in discharging or punishing by dismissal his employees; and so it allows the employer to take such action subject to the condition that" he obtains the approval of the conciliation officer to the action taken by him. Now where an application is made by the employer for the requisite approval under sec. 33(2)(b) what the conciliation officer would have to consider is whether a prima facie case has been made out by the employer for discharge of the employee in question. If the employer has held a proper inquiry into the alleged misconduct of the employee and if it does not appear that the proposed discharge of the employee amounts to victimisation or unfair labour practice, the conciliation officer would have to limit his inquiry only to the question whether a prima facie case has been made out or not. If he comes to the conclusion that a prima facie case is made out, he would have to grant approval to the employer. He would not be concerned, to inquire as to what would be the effect of his order upon industrial peace between the employer and the employees, nor would he be guided in making the order by the merits of the industrial dispute pending conciliation before him.

[12] In the context of this background, it is difficult to Sec how an order granting or refusing approval under sec. 33(2)(b) can be regarded as an order of interlocutory character. The application under sec. 33(2)(b) is not for an interlocutory relief in a pending conciliation proceeding. It is a totally distinct and separate proceeding which becomes necessary by reason of the ban imposed by the Legislature on the employer from discharging an employee during the pendency of the conciliation proceeding. The cause of action for making the application has nothing to do with the Industrial dispute in the pending conciliation proceeding. Nor does its determination depend upon the merits of such industrial dispute. The inquiry which is required to be held by the conciliation officer for the purpose of considering whether to grant or to refuse the application is a totally distinct and separate inquiry unconnected with the main conciliation proceeding. It is no doubt true that the application is required to be made because a conciliation

proceeding is pending but that cannot impart the character of interlocutory proceeding to the application. The application is made for the purpose of lifting the legislative ban imposed in the interest of industrial peace and the conciliator has to apply his mind to the relevant considerations for the purpose of deciding whether to lift the ban or not. We are, therefore, of the view that the order made under sec. 33(2)(b) is not an order of interlocutory character. This view which we are taking is supported by the decision of the Supreme Court in Tata Iron and Steel Co. Ltd. v. Modak, A.I.R. 1966 S.C. 380.

Dealing with the question as to the nature of an application under sec. 33(2), the Supreme Court pointed out in that case at page 383 :

"As we have already indicated, the application of the appellant can, in a sense, be treated as an incidental proceeding, but it is a separate proceeding all the same, and in that sense, it will be governed by the provisions of sec. 33(2) as an independent proceeding. It is not an interlocutory proceeding properly so called in its full sense and significance; it is a proceeding between the employer and his employee who was no doubt concerned with the main industrial dispute along with other employees; but it is nevertheless a proceeding between two parties in respect of a matter not covered by the said main dispute. It is, therefore, difficult to accept the argument that a proceeding which validly commences by way of an application made by the employer under sec. 33(2) (b) should automatically come to an end because the main dispute has in the meanwhile been decided."

Some reliance was placed on behalf of the second respondent on the observations of the Supreme Court in Jaswant Sugar Mills' case (supra) where it has been held that the conciliation officer is not a tribunal within the meaning of Article 136 nor can he be regarded as "other Authority" within the meaning of sec. 4 of the Industrial Disputes (Appellate Tribunal) Act, 1950. But these observations cannot help us in determining whether the impugned order under sec. 33(2)(b) is an interlocutory or a final order. We are of the view, for reasons set out above, that such an order is not in the nature of an interlocutory order but is a final order affecting the right of the employer to discharge the employee by refusing to accord approval to the action of discharge taken by the employer and is, therefore, in any view of the matter,

required to be supported by reasons.

[13] We may point out that an argument was sought to be advanced before us on behalf of the second respondent that even if the conciliation officer was bound to give reasons in support of the order, failure to give reasons did not invalidate the order so as to render it liable to be quashed and set aside but this Court could In the exercise of its jurisdiction under Art. 226 compel the conciliation officer by a mandamus to give reasons in support of the order and then proceed to examine whether the order was required to be quashed by certiorari. But we did not allow this argument to be raised before us because sitting as a Full Bench we are concerned only with the question referred to us by the Division Bench and we cannot allow any party to extend the scope and ambit of the controversy beyond that set out in the question referred to us.

[14] Our answer to the question referred to us, therefore, is that the conciliation officer exercising quasi-judicial functions under sec 33(2)(b) is bound to make a speaking order or, in other words, reasons must be stated on the face of the order. There will be no order as to costs of this reference.

Answer stated