IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1578 OF 2021

Mayur Vasant Sonawane,

Aged about 30 years, Occ. Labour,

adult, Indian Inhabitant, Having

address at Takle Nagar, Ganeshwadi

Panchvati, Nashik, District-Nashik.

Presently residing out of Nashik

due to externment order. .... Petitioner

Versus

1. The State of Maharashtra, &

2. The Dy. Commissioner of

Police, K-Zone, Nashik. ... Respondents

....

Mr. Prashant Aher, Advocate i/b. Prashant Gavai, for the Petitioner.
Mr. G.S. Godbole, Advocate appointed as *Amicus Curiae.*
Smt. A.S. Pai, Public Prosecutor a/w. K.V. Saste, APP, for the State.

....

CORAM : S. S. SHINDE,
PRAKASH D. NAIK, &
SARANG V. KOTWAL, JJ.

RESERVED ON : 25th MARCH, 2022

PRONOUNCED ON : 21st APRIL, 2022

JUDGMENT : [*PER SARANG V. KOTWAL, J.*]

1. Pursuant to the reference made by a Division Bench (Coram: Nitin Jamdar & Sarang V. Kotwal, JJ.) vide order dated 17.12.2021, we are called upon to decide the following two issues:

(i) Whether the power under Section 60 of the Act of 1951 is *quasi* judicial in nature; and

(ii) Whether there is a duty to give reasons while disposing the appeal under Section 60 of the Act of 1951.

The Act referred to in these issues is the 'Maharashtra Police Act, 1951' (hereinafter referred to as 'the Act of 1951').

2. The Division Bench (Coram: Nitin Jamdar & Sarang V. Kotwal, JJ.) who heard this Writ Petition did not agree with the view of another Division Bench (Coram: R.M. Borde & A.I.S. Cheema, JJ.) expressed in the case of **Suraj Balbhim Shelke Vs. State of Maharashtra & others**[1], and therefore referred these questions to be decided by a Larger Bench.

1 2016(4) Bom.C.R. (Cri.) 273

Background of Reference :

3. Necessity to decide these issues arose because, depending on whether the order passed under Section 60 of the Act of 1951 is *quasi* judicial or not; the matters challenging the order passed under Section 60 of the Act of 1951 could be decided by a Single Judge or a Division Bench. Chapter XVII Rule 18 of the Bombay High Court Appellate Side Rules, 1960 describes the Single Judge's power to finally dispose of the applications under Articles 226 or 227 of the Constitution of India. In particular, the explanation given under the said Rule is important. The order passed under the Act of 1951 is mentioned at Sr. No.23 under that Rule. The relevant contents of the said Rule are as follows :

> " **CHAPTER XVII**
> **PETITIONS UNDER ARTICLES 226 AND 227 AND APPLICATIONS UNDER ARTICLE 228 OF THE CONSTITUTION AND RULES FOR THE ISSUE OF WRITS AND ORDERS UNDER THE SAID ARTICLES**
>
> **18. Single Judge's powers to finally dispose of applications under Article 226 or 227.—** Notwithstanding anything contained in Rules 1,4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution (or applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of—
>
> (1) xxxxx

(2) xxxxx
xxxxxx
xxxxxx
(23) The orders passed under the Bombay Police Act, 1951;
xxxxxx
xxxxxx
(46) xxxxx

may be heard and finally disposed of by a Single Judge appointed in this behalf by the Chief Justice:
xxxxx
xxxxx
xxxxx

Explanation – The expression "order" appearing in clauses (1) to (46) means any order passed by any judicial or quasi judicial authority empowered to adjudicate under the abovementioned statutes."

4. Thus, depending on whether the order under Section 60 of the Act of 1951 is passed by a *quasi* judicial authority or an administrative authority, the matter would lie before a Single Judge or a Division Bench. The judgment in **Suraj**'s case itself was passed on a reference made to that Division Bench for deciding the issue as to whether the order passed by the State Government, in exercise of powers conferred under Section 60 of the Act of 1951, confirming the order passed by the externing authority under Sections 56 and 57 of the Act of 1951 can be construed as an 'order' within the

contemplation of explanation to Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960. After discussing various judgments, the Division Bench in that case answered the reference by holding that the authorities i.e. the Sub-Divisional Magistrate or the Deputy Commissioner, as the case may be or the State Government, dealing with the appeal against the order of externment, are expected to pass the order, based on the subjective satisfaction of these statutory authorities. It was also held that, the duty to act judicially would be clearly excluded and that the decision would be an administrative decision, as opposed to *quasi* judicial decision. It was further observed that there was no obligation to record reasons. This obligation can not be imported in Section 60 of the Act of 1951 regarding the appellate power exercisable by the State Government while disposing off the appeal. It was held that, as far as the nature of the order passed under Section 60 of the Act of 1951 by the State Government is concerned, it shall have to be construed as an administrative order and not a *quasi* judicial one.

5. When the present Petition was heard by another Division Bench (Coram: Nitin Jamdar & Sarang V. Kotwal, JJ.), the said Bench

took a different view from the one expressed in **Suraj**'s case. And, therefore, this reference was made by framing the issues, which we have referred to in the first paragraph.

6. Learned Counsel Shri Godbole was requested by the Division Bench (Coram: Nitin Jamdar & Sarang V. Kotwal, JJ.) hearing this Petition to assist the Court. He continued to assist the Court at the Court's request in this reference as well.

We have heard Shri Godbole, Shri Prashant Aher, learned counsel for the Petitioner and Smt. Aruna Pai, learned Public Prosecutor for the State. Since all the learned counsel based their submissions extensively with reference to the observations made in various judgments, their submissions are considered with reference to those judgments in the following discussion. However, briefly, their submissions can be summarised as follows.

7. **Submissions of Shri Godbole and the Petitioner's Counsel Shri Aher** :

i. In deciding the appeal under Section 60 of the Act of 1951, the dominant element of objectivity is necessary. It does not depend on the subjective satisfaction of the Appellate Authority

i.e. the State Government. The Appellate power is always *quasi* judicial.

ii. The amendment to Section 60 of the Act of 1951 made in the year 1995 makes a vital difference. The Division Bench in **Suraj**'s case has relied on the judgments which were delivered prior to 1995 Amendment. The amendment of 1995 was not taken into consideration. In that judgment, the Division Bench had placed heavy reliance, and in fact had based the entire reasoning, on the judgment of a Full Bench of the Gujarat High Court passed in the case of **Sandhi Mamad Kala Vs. State of Gujarat[2].**

iii. The concept of nature of quasi judicial orders has undergone a sea change since the said decision passed in 1973 and the recent trend of the Hon'ble Supreme Court is quite different from the view expressed in **Sandhi Kala**'s judgment.

iv. There may or may not be a lis between the two parties, and yet, the nature of order will indicate whether the order is quasi judicial or administrative. While it is true that details of the

2 1973 GLR 384 (FB)

material against the externee cannot be disclosed, yet, it is possible to give reasons without referring to such material. The confidentiality of the material can be maintained while giving reasons. The reasons are different from the grounds of passing the externment order, and the Appellate Authority is obliged to give reasons for deciding the Appeal.

v. The Petitioner's counsel has adopted the submissions made by Shri Godbole.

8. <u>Submissions of learned Public Prosecutor</u> :

i. Smt. Aruna Pai submitted that the externment proceedings are like preventive detention. They are largely precautionary, based on suspicion. Therefore, it is not possible to even conceive as to how these orders are *quasi* judicial. The Authorities are required to act on anticipation of future trouble based on circumstances giving rise to reasonable suspicion. This process can only be arrived at, through subjective satisfaction. These orders are preventive in nature and are necessary in the larger interest of the society.

ii. Smt. Pai relied on the observations in **Suraj**'s and **Sandhi Kala**'s

cases. She also placed heavy reliance on the observations made by the Hon'ble Supreme Court firstly, in the case of **Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police, State of Maharashtra[3];** and secondly, in the case of **State of Maharashtra and another Vs. Salem Hasan Khan[4]**. According to Smt. Pai in both these cases it was specifically observed that the reasons are not necessary while passing either the original externment order or the order under Section 60 of the Act of 1951.

iii. Learned Public Prosecutor also relied on the observations made by a Single Judge of this Court in the case of **Damodar Jairam Sao Vs. Deputy Charity Commissioner and others[5]**. She relied on the observations in the said judgment that in some cases the administrative authority may determine the question of fact before arriving at a decision resulting in civil consequences, which encompasses infraction of not merely property or personal rights, but of civil liberties, material deprivations and non-pecuniary damages. Recording of reasons reflects

3 AIR 1973 SC 630

4 (1989) 2 SCC 316

5 2012(3) Bom.C.R. 684

application of mind. Mere presence of one or two attributes of *quasi* judicial authority would not make an act a quasi judicial act. Hence, granting of an opportunity of hearing and passing reasoned order would not assume the character of exercise of judicial or *quasi* judicial power.

Consideration of these submissions and analysis of judgments :

9. Before entering into the discussion on the submissions and analysis of judgments, it is necessary to reproduce relevant Sections i.e. Sections 56 and 60 of the Act of 1951. They are as follows :

> **"56. Removal of persons about to commit offence .**
>
> (1) Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under section 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the *Official Gazette,* extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate empowered by the State Government in that behalf –
>
> (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or
>
> (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter

XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or

(bb) that there are reasonable grounds for believing that such person is acting or is about to act (1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980, or (2) in any manner prejudicial to the maintenance of supplies of commodities essential to the community as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or such prejudicial act, or the outbreak or spread of such disease or notwithstanding anything contained in this Act or any other law for the time being in force, to remove himself outside such area or areas in the State of Maharashtra (whether

within the local limits of the jurisdiction of the officer or not and whether contiguous or not), by such route, and within such time, as the officer may specify and not to enter or return to the area or areas specified (hereinafter referred to as "the specified area or areas") from which he was directed to remove himself.

2. xxxxx

60. **Appeal –**

(1) Any person aggrieved by an order made under section 55, 56, 57 or 57A may appeal to the State Government or to such Officer as the State Government may by order specify (hereinafter referred to as "the specified Officer") within thirty days from the date of such order.

(2) An appeal under this section shall be preferred in duplicate in the form of a memorandum, setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by that order or a certified copy thereof.

(3) On receipt of such appeal the State Government [or the specified Officer] may, after giving a reasonable opportunity to the appellant to be heard either personally, or by a pleader, advocate or attorney and after such further inquiry, if any, as it may deem necessary, confirm, vary or cancel, or set aside the order appealed against, or remand the case for disposal with such directions as it or he thinks fit, and make its or his order accordingly:

Provided that the order appealed against shall remain in force pending the disposal of the appeal, unless the State Government or the specified Officer otherwise directs.

Explanation.--For the purposes of this sub-section the

power to vary the order appealed against shall include, and shall be deemed always to have included, the power to hold such order in abeyance and to make conditional order permitting the person to enter or return to the area or such areas and any contiguous districts or part thereof, or to the specified area or areas, as the case may be, from which he was directed to remove himself.

(4) In calculating the period of thirty days provided for an appeal under this section, the time taken for granting a certified copy of the order appealed against shall be excluded."

10. Interestingly, in **Suraj**'s case a reference is made to another judgment of a Division Bench in the case of **Manjeet Singh Moolsingh Sethi Vs. State of Maharashtra**[6]. In Paragraph-5 of **Suraj**'s case, it is recorded that in Manjeet Singh's case a preliminary objection was raised on behalf of the State that the impugned order in Manjeet Singh's case was passed in the quasi judicial proceedings and, therefore, as per the aforementioned Rule, the matter was required to be decided by a Single Judge. The Division Bench in Manjeet Singh's case, disagreed with the State's submission.

However, in the present case before us today, the State's stand is diametrically opposite and learned Public Prosecutor Smt. Pai has submitted before us that the order under Section 60 was not

6 2008 All M.R. (Cri.) 2701

in the nature of a *quasi* judicial order.

11. **Suraj**'s case is based mainly on the judgment of a Full Bench of Gujarat High Court in the case of **Sandhi Kala**'s case. Apart from that case, the Division Bench in **Suraj**'s case had referred to many other cases. Some prominent cases we propose to discuss hereinafter.

12. In paragraph-14 of **Suraj**'s case, it is observed that the basic test for distinction between an administrative decision and a *quasi* judicial decision is, whether the decision of the statutory authority is based solely and exclusively on the application of legal principles of objective standards to the facts found on the material placed before it, without any extraneous considerations or it is guided by consideration of policy or expediency and is based on the subjective satisfaction of the statutory authority.

13. It was further observed in paragraph-15 of **Suraj**'s case that Sections 56 and 57 under which the externment orders could be passed in different sets of circumstances mentioned therein, in terms provided that, the officer passing the order has to form his own opinion and has to satisfy himself about the existence of

circumstances that warrant issuance of order in case of given individual, while the tenor of Section 60 suggests that, the State Government as the Appellate Authority has to consider the matter subjectively. Sub-section (3) of Section 60 empowers the State Government to make such further enquiry as it deems fit before confirming, varying or setting aside the order passed by invoking Sections 56 and 57 of the Act of 1951.

While observing this, the Division Bench in **Suraj**'s case missed the crucial amendment made in 1995 giving power to the appellate authority to remand the case for disposal. This particular power is not considered in **Suraj**'s case. It is difficult to understand how remanding the matter without giving any reasons would serve any practical purpose. The externing authority, at the first instance, passes some order based on the material before it. If the externing authority is not told why the matter is remanded back for reconsideration, he will be at a loss to decide whether to confirm his earlier order or to pass a different order because he will not know what are the reasons for remanding it back.

14. Since **Suraj**'s case extensively refers to **Sandhi Kala**'s case, it

is necessary to refer to that judgment. It was specifically observed in the said judgment that the State Government while exercising its power against an order of externment under Section 60 of the Act of 1951 was not bound to give and disclose reasons in support of its order. The main discussion was in respect of nature of power exercisable by the externing authority at the first instance. It was observed that the circumstances to be inquired into by the externing authority would be, if not wholly, at least to some extent, are the circumstances of suspicion and the question to be considered by the externing authority would be whether these circumstances are such as require taking up anticipatory action. These are not the matters which are amenable to judicial approach. They cannot be assessed by any objective standards.

This is exactly the submission made by Smt. Pai before us. To that extent we agree that it is an action in anticipation of future possible situation which can be created by the proposed externee's acts. This will be within territory of subjective satisfaction of the externing authority. In the same line of discussion, the analogy was extended by the Full Bench of Gujarat in that case to the powers and

functions of the Appellate Authority under Section 60 of the Act of 1951. It was observed that all the reasons which the Full Bench had discussed taking a view that the externing authority, making an order of externment, was administrative; were applicable to the determination of the question whether the power exercised by the State Government in disposing off the appeal was administrative or *quasi* judical. It was held that necessary subjective satisfaction was required to be recorded by the Authorities, including the State Government. It was further held that for the same consideration, reasons were not required to be given by the Appellate Authority.

Here, we differ from the observations made in **Sandhi Kala**'s case regarding nature of power under Section 60 of the Act of 1951.

15. We make it clear that we are not deciding whether the order passed by the externing authority is administrative or *quasi* judicial. The point of reference is restricted to the order passed under Section 60 of the Act of 1951 which is an appellate order. According to us, the Appellate Authority is required to act independently. The Authority is not empowered to pass the order at the first instance. The externment order can be confirmed, set aside,

modified or the matter can be remanded back. But, these are independent functions. To arrive at the conclusion, the Appellate Authority will necessarily have to take into consideration the material placed before it. The Appellate Authority is not required to reach its subjective satisfaction. It has to objectively test the externment order placed before it. There is a definite material in the form of externment order, which the Appellate Authority has to consider for its correctness. This function is different from arriving at a subjective satisfaction based purely on the material against the Appellant. The Appellate Authority has to objectively assess whether the externment order was passed rightly. The appellate authority does not act as a confirming authority regarding the original externment order. It has to act independently.

16. In this context, we may now refer to the judgment of the Hon'ble Supreme Court in the case of **Indian National Congress (I) Vs. Institute of Social Welfare and others**[7]**.** In **Suraj**'s case, this case is referred but the paragraphs which we propose to rely upon are not considered in the context of the issue before us. The relevant paragraphs from **Indian National Congress (I)**'s judgment are

7 (2002) 5 SCC 685

paragraphs-22 to 27, which read as under :

"**22.** Atkin L.J. as he then was, in *R. v. Electricity Commissioners*, (1924) 1 KB 171, stated that when any body of persons has legal authority to determine questions affecting the rights of subjects and having the duly to act judicially, such body of persons is a quasi-judicial body and decision given by them is a quasi-judicial decision. In the said decision, there was no contest or *lis* between the two contending parties before the Commissioner. The Commissioner, after making an enquiry and hearing the objections was required to pass order. In a nutshell, what was held in the aforesaid decision was, where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority is under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act.

23. In *Province of Bombay v. Kusaldas S. Advani and Ors.*, AIR 1950 SC 222, it was held thus:

"(i) that if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a *lis* and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the

> subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.
>
> In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these:

> Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no *lis* or two contending parties and the contest is between the authority and subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

25. Applying the aforesaid principle, we are of the view that the presence of a *lis* or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However,

in the absence of a *lis* before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.

26. Coming to the second argument of learned counsel for the respondents, it is true that mere presence of one or two attributes of quasi-judicial authority would not make an administrative act as a quasi-judicial act. In some case, an administrative authority may determine question of fact before arriving at a decision which may affect the right of an appellant but such a decision would not be a quasi-judicial act. It is different thing that in some cases, fair play may demand affording of an opportunity to the claimant whose right is going to be affected by the act of the administrative authority, still such an administrative authority would not be a quasi-judicial authority.

27. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority."

17. Smt. Pai's submission was based on the observations in paragraph-26, reproduced hereinabove, but, the judgment lays down its ratio from paragraphs-22 to 27. In our view, every single criteria mentioned in paragraph-24 from (a) to (d) is applicable to the order passed by the Appellate Authority under Section 60 of the Act of

1951. In particular, the observations made in paragraph-27 that "where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a *quasi* judicial authority", is squarely applicable to the procedure which is required to be followed by the Appellate Authority under Section 60 of the Act of 1951. The Appellate Authority is even empowered to carry out such further enquiry as deemed necessary apart from the requirement of giving reasonable opportunity to the Appellant to be heard personally or by a pleader.

18. Even in **Damodar Sao**'s case, relied on by Smt. Pai, in paragraph-34, the observations of the Hon'ble Supreme Court in the case of **Indian National Congress (I)** are quoted and based on that in paragraph-36 it was observed that, "When the law requires that an authority before arriving at a decision must make an enquiry, such requirement of law makes the authority a *quasi judicial* authority.". Thus, even the **Damodar Sao**'s case follows the ratio of the Hon'ble Supreme Court expressed in **Indian National Congress (I)**'s case. Therefore, the observations in **Damodar Sao**'s case in fact are against the submissions of Smt. Pai.

19. Based on this discussion, we are of the opinion that the power under Section 60 of the Act of 1951 is *quasi* judicial in nature and the orders passed under that Section are *quasi* judicial orders. This answers the first issue of reference.

20. The second issue is whether there is duty to give reasons while disposing the appeals under Section 60 of the Act of 1951. Learned Public Prosecutor Smt. Pai relied on the judgments of the Hon'ble Supreme Court in the cases of **Salem Khan** and **Pandharinath Rangnekar**, to support her contention that the Appellate Authority under Section 60 of the Act of 1951 is not required to give any reasons whatsoever while deciding the appeal. This submission and these two judgments are required to be seen in proper perspective and in the context of the facts and submissions canvassed before the Hon'ble Supreme Court in those cases.

21. In **Salem**'s case, the externee had approached the High Court while his appeal under Section 60 was pending. During the pendency of that Writ Petition, the State Government dismissed the externee's appeal by a short order. The externee thereafter challenged the appellate order also in the pending Writ Petition. At

the time of final hearing, it was urged that since the State Government omitted to give reasons in support of the order of disposal of appeal, the same was vitiated in law. The High Court agreed with the Petitioner and allowed the Writ Petition thereby quashing the appellate order as well as the initial externment order on this ground alone without going to the other questions. The State Government challenged the High Court's judgment before the Hon'ble Supreme Court relying on the decision in **Rangnekar**'s case. The relevant paragraph of **Rangnekar**'s judgment was quoted thus :

> "Precisely for the reasons for which the proposed externee is only entitled to be informed of the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to write a reasoned order in the nature of a judgment."

Based on these observations in **Rangnekar**'s case, it was further observed that if the authorities were to discuss the evidence in the case it would be easy to fix the identity of the witnesses who were unwilling to depose in public against the proposed externee. A reasoned order containing a discussion would probably spark off another round of harassment. In **Salem**'s case, therefore, the Hon'ble

Supreme Court took a view that the High Court was in error in quashing the order as confirmed by the State Government in appeal.

22. In **Rangnekar**'s case, the Hon'ble Supreme Court had observed that neither the externing authority nor the State Government in appeal can be asked to write reasoned order in the nature of a judgment. The same view was followed in **Salem**'s case. In these observations, the key words are "a reasoned order in the nature of a judgment". The State Government in appeal was not expected to write reasoned order in the nature of a judgment, but, that did not mean that no reasons whatsoever were required to be given. The appellate order was not expected to be in the nature of a judgment, but, at the same time, reasons could be given by testing the impugned externment order objectively. It is possible to give reasons without divulging specific particulars of allegations against the externee. The reasons can be given maintaining confidentiality of the relevant material. The task of the Appellate Authority is to consider whether the externing authority has rightly passed the externment order while taking into consideration the material against the externee. At that time, the Appellate Authority need not

discuss the particulars of material against the Appellant therein.

This view is supported by the observations of the Hon'ble Supreme Court in the case of **Harinagar Sugar Mills Ltd. Vs. Shyam Sunder Jhunjhunwala and others[8].** This judgment is relied on by Shri Godbole in support of his contention that reasons can be given and confidentiality can still be maintained. In that case, the Hon'ble Supreme Court considered the question whether the Central Government exercising appellate powers under Section 111 of the Companies Act, 1956, before its amendment by Act 65 of 1960 was a Tribunal exercising judicial functions. The relevant provisions of Section 111 of the Indian Companies Act, 1956 had sub-section (7), which mentioned that all proceedings in appeals under sub-section (3) or in relation thereto shall be confidential, and no suit, prosecution or other legal proceeding shall lie in respect of any allegation made in such proceedings, whether orally or otherwise. Paragraph-21 of that judgment reads thus :

> "**21.** Relying upon clause (7) of Section 111 which provided that the proceedings in appeals under sub-section (3) or in relation thereto shall be confidential, it was urged that the authority hearing the appeal is not obliged to set out

8 AIR 1961 SC 1669

> reasons in support of its conclusion and it must be assumed that in disposing of the appeal, the authority acted properly and directed registration of shares. But the provision that the proceedings are to be treated as confidential is made with a view to facilitate a free disclosure of evidence before the Central Government which disclosure may not, in the light of publicity which attaches to proceedings in the ordinary courts, be possible in a petition under section 155 of the Companies Act. The mere fact that the proceedings are to be treated as confidential does not dispense with a judicial approach nor does it obviate the disclosure of sufficient grounds and evidence in support of the order."

These observations indicate that when acting judicially, the authority can maintain confidentiality; and yet, reasons are required to be given. That requirement is not dispensed with.

23. Shri Godbole relied on the judgment of the Hon'ble Supreme Court in the case of **Kranti Associates Private Limited Vs. Masood Ahmed Khan and others**[9]. Expressing the need to give reasons, the Hon'ble Supreme Court in paragraph-47 has held thus :

> "47. Summarizing the above discussion, this Court holds:
>
> (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

9 (2010) 9 SCC 496

(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 decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-37).

(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. See Ruiz Torija v. Spain, (1994) 19, EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(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".

24. Based on these observations, the view taken in **Rangnekar**'s and **Salem**'s cases will have to be interpreted. Once it is held that the Appellate Authority is acting in *quasi* judicial capacity in passing *quasi* judicial orders, then the requirement to give reasons in his order is a natural corollary. The view expressed in **Rangnekar**'s and **Salem**'s cases can be followed by the Appellate Authority by giving reasons, without divulging the material which would be prejudicial to the society and the witnesses concerned. The Appellate Authority has to test the externment order objectively. It is also important to note that as mentioned earlier, in 1995 there was an amendment to Section 60 of the Act of 1951, where the power to remand the matter was added, which also necessitates giving reasons at least in brief to enable the externing authority to know as to why the matter is remanded back, as discussed earlier. Both **Rangnekar**'s and **Salem**'s judgments were passed before amendment of 1995.

25. Based on the above discussion, we answer the reference as follows :

(i) The power under Section 60 of the Act of 1951 is *quasi* judicial in nature and the orders passed under that Section are *quasi* judicial orders.

(ii) There is a duty to give reasons, at least in brief, while disposing the appeals under Section 60 of the Act of 1951.

26. Needless to add that in view of these answers, the provisions of Chapter XVII Rule 18 of the Bombay High Court Appellate Side Rules, 1960 will have to take effect in accordance with these answers.

27. The present Writ Petition be placed before the appropriate Division Bench for further consideration based on these answers to the reference.

28. Before parting with the order, we record our appreciation for the efforts taken by all the learned counsel.

S.S. SHINDE, J.

PRAKASH D. NAIK, J.

SARANG V. KOTWAL, J.

Deshmane (PS)