

JUDICIAL DECISION MAKING

INTRODUCTION

When the topic was first selected for a discussion, I thought it was "Decision Making". However, it was only the result of some misunderstanding and it in fact is "Judicial Decision Making". Since the topic is rather large in gamut, I propose to confine it to Judicial Decision Making in Civil matters; which of course emanates from the consideration that Decision Making in Civil and Criminal matters requires a different approach and it can be properly examined only from different points of view.

OBJECTIVES

2. The objective to be achieved is to improve the participants' skills in Making Judicial Decisions. By the end of the session they will be in a position to pass proficient judicial orders, better in substance, quality and effectiveness, such as would be able to sustain public scrutiny. The bottom line is provided by the consideration that a Court's authority, possessed of neither the purse nor the sword, ultimately rests on sustained public confidence in its moral sanction. It may be asserted, without fear of contradiction, that its authority is moral rather than physical. It operates only by influence and not by its power alone. Therefore the Judges, particularly those of the subordinate dispensaries must depend upon public support for the ultimate efficacy of their judgements, which they can contrive by making lawfully correct judicial decisions, and where they do not find any law in support, by rendering judicial orders having the linchpin of their conscience.

3. It must always be borne in mind that the purpose of a good judicial decision is not the advancement of the Judge but of justice which he is enjoined to administer. It should be made to look towards what is established at the trial and is accordance with law, even though the process may not lead to what they call substantial justice in criminal cases. It means the mental ascertainment of a correct legal or factual position by the judge before he goes on record with the result of that ascertainment.

WHAT IS JUDICIAL DECISION MAKING

4. For proper appreciation of phrase "Judicial Decision Making", we must have an understanding of the word "Judicial". As we have it from the Law Lexicon, Ballentine's Law Dictionary, West's Legal Thesaurus and Webster's Dictionary, the word "Judicial" means characterising whatever emanates from a judge as such or whatever proceeds from Courts of justice. Judicial Decision Making is a formalized process whereby decisions are made by the Presiding Officers of Courts, seized of the settlement of a dispute between two parties. It postulates the presence of a situation where two parties are before a Court of law with adverse claims. To start with, it is a mental business which enables the judge to make a decision in his mind about the correctness or otherwise of a statement or proposition from a legal point of view.

JUDICIAL DECISION AND JUDGMENT

5. A judicial decision is not exactly the same as "judgment" and the courts have recognized the distinction between two words. The Law Lexicon dictates that a finding of fact or conclusion of law by the judge trying a case, or his decision of a controverted point, or opinion upon the matters submitted, whether oral or in writing, does not constitute a judgment; and it is not such a definitive sentence or adjudication as is contemplated by that term. The distinction lies in the fact that order is a decision made during the progress of the case, either prior or subsequent to final judgment, settling some point or practice or some point collateral to the main issue presented by the pleadings and necessary to be disposed of before such issue can be passed upon by the court, or necessary to be determined in carrying into execution of the final judgment.

6. For exact import of the word "judgment", we may make a reference to Black's Law Dictionary which defines it as "the official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination. It means the final decision of the court resolving the dispute and determining the rights and obligations of the parties. Further, it is the law's last word in a judicial

controversy, being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding.

7. The Code of Civil Procedure also makes a distinction between "judgment" and "orders" made during the course of proceedings before a court, which, as we understand from law Lexicon, is a judicial decision. Under section 2 (9), "judgment" means the statement given by the judge of the grounds of a decree or order. In accordance with section 2 (14), "order" means the formal expression of any decision of a Court which is not a decree. As we have seen, judgment has been defined as the statement given by a judge of the grounds of a decree or an order. It suggests that if a judicial order is supported by grounds it also amounts to judgment. In spite of this circumstances, however, order is not exactly the same as judgment, which is manifest from the fact that these words have been separately dealt with and defined by the Code.

8. It may, however, be kept in view that word "Order" too has been mentioned in the definition of the word "judgment" in section 2(9) of the Code, which brings about a paradox. But we do have an explanation, in that the word "Order" in the definition of "judgment" signifies final order granting or refusing to grant relief in a civil matter. Therefore, when we come to think of it, this can be resolved with the statement that word "judgment" includes an order based on grounds given by the judge, but the reverse is not true; that is to say that the word "order" does not include a judgment, which is final decision of a court resolving disputes between the parties with determination of their rights and obligations.

9. This conclusion is supported by rules 1 and 3 of order XX of the Code. Rule 1(1) says that "on completion of evidence, the Court shall fix a date, not exceeding fifteen days, for hearing of arguments of parties". Sub-rule 2 provides that "the Court shall, after the case has been heard, pronounce judgment in open Court, either at once or on some future day not exceeding thirty days, for which due notice shall be given to the parties or their advocates". Rule 3 provides that "the Judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed shall not afterwards be altered or added to, save as provided by section 152 or on review".

10. It is clear from these provisions that judgement is formal pronouncement of the decision of a court finally determining the rights and obligations of the parties and resolving the dispute between them. It requires the observance of certain formalities laid down in the Procedure Code. After arguments of the parties have been heard, it has to be dated and signed by the Judge in open Court at the time of its pronouncement and once signed it cannot be altered or added to, save as provided by section 152 or on review. The observance of legal formalities has to precede the pronouncement of final judgment to be followed by a decree.

11. This is not so in the case of "orders" which have been separately dealt with under section 104 (1) which provides that "an appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force and from no other orders". An appeal is expressly allowed under rule 1 of Order XLIII of the Code of Civil Procedure which enumerates the orders from which an appeal lies under the provisions of section 104 of the Code. These provisions make a very clear distinction between a judgement and orders under section 104 read with rule (1) of Order XLIII. They are judicial decisions not amounting to judgments, in that they do not finally determine rights and obligations of the parties to suits or proceedings before the Court.

HOW TO MAKE A JUDICIAL DECISION

12. The orders, either appealable or otherwise made under different provisions of the Code of Civil Procedure are based on factual situations; which are provided by the pleadings of the parties, claims arising out of and grounded on those pleadings and the orders or judicial decisions sought to be made, relevant legal provisions and the arguments of the parties. We might say that findings of the court on issues involved in a suit for determination are also the result of judicial decisions. The courts have to be equipped with necessary skills for qualitative judicia