

#92

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 29.08.2018

W.P.(C) 6842/2018, CM APPL 25998/2018

SARASWATI EDUCATIONAL CHARITABLE TRUST AND ANR.

.....Petitioners

Versus

UNION OF INDIA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Gaurav Bhatia, Advocate with Mr. Utkarsh Jaishwal and Mr. Abhishek Singh, Advocates

For the Respondents : Mr. Bhagwan Swarup, CGSC with Mr. Kamaldeep and Mr. Shravan Kumar Shukla, Advocate for UOI/R-1.
Mr. Vikas Singh, Senior Advocate with Mr. T. Singhdev, Ms. Michelle Biakthansangi Das, Ms. Puja Sarkar, Ms. Amandeep Kaur, Mr. Tarun Verma, Mr. Abhijit Chakravarty and Ms. Manpreet Kaur, Advocates for MCI/R-2.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present writ petition is instituted on behalf of the petitioners under Article 226 of the Constitution of India. Although multiple

reliefs have been prayed for therein, Mr. Gaurav Bhatia, learned counsel appearing on behalf of the petitioners, limits the relief to a direction to the Central Government to afford the petitioner institution an opportunity of being heard, in terms of the scheme provided for by the provisions of Section 10 of the Indian Medical Council Act, 1956(hereinafter referred to as the 'said Act').

2. At the outset the principal issue that arises for consideration in the facts and circumstances of the case maybe briefly articulated. Predicated on the decision of the Hon'ble Supreme Court in "**Glocal Medical College and Super Speciality Hospital and Research Centre vs. Union of India and Another**" reported as (2017) 15 SCC 690 and in particular paragraph 23 thereof, read in conjunction with the first proviso to Section 10 (A) (4) of the said Act; it is vigorously urged on behalf of the learned counsel for the petitioners that, the Central Government could not have rejected the petitioner institution's scheme, without affording them an opportunity of being heard.

3. Mr. Gaurav Bhatia, learned counsel appearing on behalf of the petitioners would also canvass the decisions rendered by this Court in "**Shri Durga Maa Shiksha & Anr. vs. Union of India & Anr.**" decided on 22.08.2017 and "**Jaipal Singh Sharma Trust & Anr. vs. Union of India & Ors**" decided on 25.05.2018 to urge that, the requirement of affording a hearing stipulated by the said proviso is not merely an empty formality, but an indispensable pre-condition which lies at the heart of the scheme of the said Act.

4. In the alternative, it is also urged on behalf of the counsel for the petitioners that, the order dated 31.05.2018 passed by the Central Government is a cryptic and non-speaking order passed by them *dehors* the consideration of the detailed representation filed on behalf of the former, vide their communication dated 15.05.2018.

5. *Per Contra*, Mr. Bhagwan Swarup, learned CGSC and Mr. T. Singhdev, learned counsel appearing on behalf of the Medical Council of India (for short 'MCI') would urge that, the impugned order is unassailable, inasmuch as, it is owing to the refusal of the petitioner to permit the Council Assessors to inspect the faculty and clinical material, subsequent upon the purported compliance and removal of deficiencies by the petitioner, that the Central Government was left with no choice, but to deny permission for admission of third batch of 150 M.B.B.S students, based entirely on the recommendation of the MCI. In other words, it has been argued that, since the said Assessors were prevented from inspecting the petitioner institution on 05.03.2018, they were unable to verify whether the deficiency of teaching faculty of 16%, as well as, the shortage of residents of 12.24%, as detailed in the earlier inspection report had been rectified or not.

6. In addition thereto, it is pointed out that, there were other deficiencies, the rectification of which, could not be verified, since the petitioner institution permitted the said Assessors to address infrastructural deficiencies alone on the said date.

7. However, there is no quarrel, insofar as, the rectification of the infrastructural deficiencies is concerned, which a bare perusal of the report dated 05.03.2018, clearly reveals as having been rectified.

8. In view of the limited relief that has been prayed for in the present proceedings, the issues that arise for consideration in the writ petition are within a very narrow compass.

9. The first issue that needs to be addressed is whether the impugned order dated 31.05.2018 suffers from the vice of being a non-speaking order. The second issue, which is a legal one, is as to whether the proviso to Section 10 (A)(4) of the said Act mandates a second hearing to a medical institution, prior to the disapproval of its application for running a medical course.

10. In **Delhi Transport Corporation Vs. Ashok Kumar Sharma** decided on 12.03.2013 in W.P.(C) 7661/2010, this Court whilst determining the requirement of giving reasons whilst rendering a judicial, quasi-judicial or administrative order observed as follows:-

‘7. The Supreme Court in a case reported as “Kranti Associates Pvt. Ltd. and Anr. v. Masood Ahmed Khand and Ors.: (2010) 9 SCC 496, has highlighted the importance of giving reasons while passing a judgment/order by any judicial or quasi judicial body. The Supreme Court has extensively examined the law and various precedents on the subject. It was observed:

“15. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasi- judicial orders but with the passage of time

the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak and Ors. v. Union of India and Ors. reported in AIR 1970 SC 150.

16. In Kesava Mills Co. Ltd. and Anr. v. Union of India and Ors. reported in AIR 1973 SC 389, this Court approvingly referred to the opinion of Lord Denning in Regina v. Gaming Board Ex parte Benaim (1970) 2 WLR 1009 and quoted him as saying "that heresy was scotched in Ridge and Baldwin 1964 AC 40".

17. The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)

18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

24. In the case of M/s. Travancore Rayons Ltd. v. The Union of India and Ors.: AIR 1971 SC 862, the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excise and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (See para 11 page 865-866).

25. In M/s. Woolcombers of India Ltd. v. Woolcombers Workers Union and Anr.: AIR 1973 SC 2758, this Court while considering an award under Section 11 of Industrial Disputes Act insisted on the need of giving reasons in support of

conclusions in the Award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (See para 5 page 2761).

26. In *Union of India v. Mohan Lal Capoor and Ors.*: AIR 1974 SC 87, this Court while dealing with the question of selection under Indian Administrative Service/Indian Police Service (Appointment by Promotion Regulation) held that the expression "reasons for the proposed supersession" should not be mere rubber stamp reasons. Such reasons must disclose how mind was applied to the subject matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (See para 28 page 98).

27. In *Siemens Engineering and Manufacturing Co. of India Ltd. v. The Union of India and Anr.*: AIR 1976 SC 1785, this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (See para 6 page 1789).

28. In *Smt. Maneka Gandhi v. Union of India and Anr.*: AIR 1978 SC 597, which is a decision of great jurisprudence

significance in our Constitutional law, Chief Justice Beg, in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (Para 34, page 612). The learned Chief Justice also held when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

33. In a Constitution Bench decision of this Court in *Shri Swamiji of Shri Admar Mutt etc. etc. v. The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors.*: AIR 1980 SC 1, while giving the majority judgment Chief Justice Y.V. Chandrachud referred to *Broom's Legal Maxims* (1939 Edition, page 97) where the principle in Latin runs as follows:

Ces-sante Ratione Legis Cessat Ipsa Lex

34. The English version of the said principle given by the Chief Justice is that:

Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself. (See para 29 page 11)

51. 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.

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 life blood 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 'rubberstamp 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 Harvard Law Review 731-737).

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 (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford 2001 EWCA Civ 405, wherein the Court referred to Article 6 of 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".

11. A perusal of the above enunciation of the law clearly reflects that, in India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions have the affect of curtailing or negating the civil rights of any person prejudicially. It is in this view of the matter that, recording of reasons in support of its conclusion, by an administrative authority, is considered indispensable. Reasons *inter alia* facilitate the process of judicial review by a Court of Law and resultantly, have become an integral component of the decision making process, as is observing principles of natural justice, even by administrative bodies.

12. Examined in the backdrop of the above legal position, and having duly considered the submission made on behalf of the official respondents to the effect that, denial of inspection resulted in the impugned decision; I am of the view that the same is cryptic and non-reasoned, inasmuch as, it fails to consider the detailed representation filed on behalf of the petitioner on 15.05.2018 and does not, in any

manner whatsoever consider the details of the rectifications made and submitted by them in compliance of the earlier report dated 17th and 18th November, 2017.

13. Even otherwise, it is observed that subsequent upon the Assessor's earlier report, the Central Government had, after affording the petitioner institution an opportunity of hearing, directed the MCI to review its recommendation, denying the latter permission to run the subject course.

14. Further, a plain reading of the impugned order dated 31.05.2018 clearly reveals that, the Central Government has merely given its imprimatur to the recommendations made by the MCI, in relation to the petitioner institution, without independently applying its mind to the material available in support of the case in hand.

15. In view of the foregoing, the impugned order deserves to be set aside on this ground alone.

16. Coming to the issue as to whether the provisions of Section 10(A) (4) require the Central Government to afford a reasonable opportunity of hearing to the petitioner institution, subsequent upon rectification by them of the deficiencies noted by Assessors of the MCI; the same in my view is no longer *res integra* in view of the decision of the Hon'ble Supreme Court in **Glocal (Supra)**.

17. The said decision clearly and unequivocally articulates the requirement of providing a hearing, subsequent upon compliance inspection, as being an indispensable pre-condition for disapproval by

the Central Government of any scheme for establishment of a medical college. It clearly posites the legal requirement of fairness in action, to meet the legislative edict, as obligated by Section 10(A)(4) of the said Act.

18. Resultantly, both the issues struck hereinabove, are answered affirmatively in favour of the petitioners and against the official respondents.

19. Consequently, the present petition is partly allowed.

20. The impugned order dated 31.05.2018 is set aside and quashed, directing the Central Government to decide the petitioner's application for permission for admission of third batch of 150 M.B.B.S students in the academic session 2018-2019 afresh, after affording the latter an opportunity of being heard, in this regard.

21. No further directions are called for in the present proceedings.

22. The writ petition is disposed of accordingly.

23. A copy of this order be given *dasti* to learned counsel for the parties under the signatures of Court Master.

**SIDDHARTH MRIDUL
(JUDGE)**

AUGUST 29, 2018
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